97TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
No. 97-564

AMENDING THE SMALL BUSINESS ACT AND THE SMALL BUSINESS INVESTMENT ACT OF 1958

MAY 17, 1982.—Committed to the Committee on the Whole House on the State of the Union and ordered to be printed

---

Mr. MITCHELL of Maryland, from the Committee on Small Business, submitted the following

REPORT

[To accompany H.R. 6068]

[Including cost estimate of the Congressional Budget Office]

The Committee on Small Business, to whom was referred the bill (H.R. 6086) to amend the Small Business Act and the Small Business Investment Act of 1958, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment strikes out all after the enacting clause of the bill and inserts a new text which appears in italic type in the reported bill.

SECTION 1. Section 20 of the Small Business Act is amended as follows:

(a) by striking from paragraph (2) of subsection (n) the figure "$60,000,000" and by inserting in lieu thereof "$167,000,000";

(b) by striking from paragraph (3) of subsection (n) the figure "$35,000,000" and by inserting in lieu thereof "$41,000,000" and by striking from such paragraph the figure "$160,000,000" and by inserting in lieu thereof "$250,000,000";

(c) by striking from paragraph (2) of subsection (q) the figure "$60,000,000" and by inserting in lieu thereof "$167,000,000"; and

(d) by striking from paragraph (3) of subsection (q) the figure "$35,000,000" and inserting in lieu thereof "$41,000,000" and by striking from such paragraph the figure "$160,000,000" and by inserting in lieu thereof "$250,000,000".

SEC. 2. Section 5 of the Small Business Act is amended by adding the following new subsection:

"(f) Notwithstanding any other provision of law, the Administration shall enter into commitments for direct loans and to guarantee loans, debentures, payment of rentals or other amounts due under qualified contracts and other types of financial assistance and to enter commitments to guarantee sureties against loss pursuant to programs under this Act and the Small Business Investment Act of 1958 in the full amounts provided by law, including reprograming requests approved by the Appropriations Committees of the United States Senate and the House of Representatives of the United States, subject only to (1) the availability of qualified applications for

94-276 O

H723-2

such direct loans and guarantees and (2) limitations and amounts contained in authorization and appropriation Acts. Nothing in this subsection authorizes the Administration to reduce or limit its authority to enter commitments for direct loans or for such guarantees to qualified applicants.".

SEC. 3. Section 404(b) of the Small Business Investment Act of 1958 is amended as follows:

(a) by striking from paragraph (1) thereof "may be issued" and by inserting in lieu thereof "shall be issued"; and

(b) by striking the period at the end of paragraph (1) thereof and by inserting in lieu thereof ", and the Administration is expressly prohibited from denying such guarantee due to the property being so acquired.".

The provisions of subsections (a) and (b) of this section shall apply to applications (for the issuance of a guarantee described in section 404 of the Small Business Investment Act of 1958) which are pending as of January 1, 1982, or are made after December 31, 1981.

SEC. 4. Section 411 of the Small Business Investment Act of 1958 is amended by adding the following at the end of subsection (h):

"The Administration shall not establish eligibility criteria based on the amount of the bond, subject to the limitation in subsections (a) and (c), or upon a percentage related to previously successfully completed contracts. The Administration shall evaluate each application on a case-by-case basis and based solely thereon shall determine the appropriate guarantee.".

SEC. 5. Section 7 of the Small Business Act is amended by striking the period at the end of paragraph (4) of subsection (a) thereof and inserting the following: ": *Provided further,* That prior to June 30, 1982 the Administration shall not promulgate, amend, or rescind any rule or regulation with respect to a formula involving prime interest rates as a criteria to determine the maximum interest rate a lender may charge on a deferred participation (guaranteed) loan.".

SEC. 6. Section 10 of the Small Business Act is amended by adding the following new subsection:

"(h) The Administration shall maintain a record of all applications for or inquires about the availability of funding for financial assistance under this Act and for guarantees and purchases under the Small Business Investment Act of 1958. Such record shall include the name, address and telephone number of the applicant or person inquiring and the dollar amount involved and shall be kept for a period of at least one (1) year from the date of each.".

SEC. 7. Section 5 of the Small Business Act is amended by adding the following new subsection:

"(g) The Administration shall notify the Senate Small Business Committee and the Small Business Committee of the U.S. House of Representatives before reprograming any program amounts authorized in appropriations Acts or reports explanatory thereof and shall notify the Senate Small Business Committee and the Small Business Committee of the U.S. House of Representatives before implementing any reorganization of such agency.".

SEC. 8. Section 2 of the Small Business Act is amended by striking "section 7(i)" from paragraph (1) of subsection (c) and by inserting "section 7(a)(11)".

SEC. 9. Section 7 of the Small Business Act is amended as follows:

(a) by striking, wherever it appears therein, "section 7(i)" from paragraphs (1), (2), (3), (8), (9) and (11) of subsection (j) and by inserting "section 7(a)(11)";

(b) by striking from subsection (k) "section 7(i)" and by inserting "section 7(a)(11)";

(c) by striking subsections (e), (h), (i), and (l); and

(d) by striking all of subsection (c) after the first two sentences in subparagraph (D) of paragraph (4) and inserting the following:

"Such loans, subject to the reductions required by subparagraphs (A) and (B) of paragraph 7(b)(1), shall be in amounts equal to 100 percent of loss if the applicant is a homeowner and 85 percent of loss if the applicant is a business or otherwise. The interest rates for loans made under paragraphs 7(b) (1) and (2), as determined pursuant to this paragraph (4), shall be the rate of interest which is in effect on the date the disaster commenced: *Provided,* That no loan under paragraphs 7(b) (1) and (2) shall be made, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis, if the total amount outstanding and committed to the borrower under subsection 7(b) would exceed $500,000 for each disaster unless an applicant constitutes a major source of employment in an area suffering a disaster, in which case the Administration, in its discretion, may waive the $500,000 limitation.".

SEC. 10. Section 7(a) of the Small Business Act is amended by adding the following new paragraph:

"(16)(A) No direct loan may be made pursuant to this subsection unless the Administration determines?

"(i) that the applicant for such loan (whether a startup or existing small business concern) demonstrates a potential for sustained business growth as evidence by (I) capacity to create, expand, or satisfy domestic or international markets for the products or services produced or rendered by such applicant, (II) location in a geographic area suitable for its business operations and access to markets, and (III) lack of unduly restrictive agreements which, if exercised, could substantially impede the profitable operations of the applicant;

"(ii) that the applicant has given reasonable assurance that it will create employment opportunities within a two-year period after all loan proceeds are disbursed; and

"(iii) those managerial or marketing weaknesses which exist with respect to such applicant and devises, in concert with the applicant, a management plan, prior to the disbursement of any proceeds of such loan, to address such weaknesses. Such plan, if needed, shall be in writing, provide for identifiable business goals, plans of action and timetables for accomplishment and shall be incorporated by reference into the loan authorization agreement. The Administration shall provide assistance for the implementation of such plans on a priority basis through such management and technical assistance activities as are authorized by this Act.

"(B) Direct loan funds under subsection (a) shall be allocated to the Administration's regional offices at least quarterly each fiscal year. The amount of such allocation shall be based solely upon the average total number of unemployed workers residing within each regional area as a percent of the average total unemployed work force nationwide for the immediately preceding fiscal quarter, or for the most recent fiscal quarter for which such statistics are available. Each regional office shall allocate such funds to each district office within its jurisdiction at least quarterly based solely upon the average total number of unemployed workers residing within the district as a percent of the average total unemployed work force region wide for the immediately preceding fiscal quarter, or for the most recent fiscal quarter for which such statistics are available. During the last fifteen calendar days of each fiscal year quarter the Administration may reallocate direct loan funds among its regions or districts if it is unreasonable to expect that such region or district will commit substantially all of its allocation before the expiration of such quarter.

"(C) Direct loans authorized by this subsection shall be extended on a priority basis within each of the Administration's designated district areas to those qualified applicants in order of the following priority—

"(i) those applicants which (I) satisfy the requirements of subparagraph (A), (II) are located in or near a labor surplus area (as defined pursuant to Defense Manpower Policy 4B (32A CDR Chapter 1) or any successor policy), (III) agree to perform or render a substantial proportion of their production or services within or near such areas, and (IV) will utilize the loan proceeds solely for construction, renovation or the purchase of land, buildings, machinery or equipment;

"(ii) those applicants which satisfy the requirements of subpararaph (A) and subparagraph (C)(i)(I), (II), and (III); and

"(iii) those applicants which satisfy the requirements of subparagraph (A).

"(D) Neither this paragraph nor the second proviso of paragraph (3)(A) of subsection (a) shall apply to direct loans made pursuant to paragraph (10) of this subsection.".

SEC. 11. Section 7(a)(3) of the Small Business Act is amended to read as follows:

"(3)(A) No loan under this subsection shall be made if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established by section 4(c)(1) of this Act would exceed $500,000: *Provided,* That the Administration's share of any loan made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate basis shall not exceed $350,000, *Provided further,* That any loan made directly pursuant to this subsection shall be accompanied by an injection of additional funds derived from nonfederal sources in the following amounts:

"(i) if the loan is under $100,000 in amount, at least 10 per centum:

"(ii) if the loan is between $100,000 and $200,000 in amount, at least 20 per centum; and

"(iii) if the loan is over $200,000 in amount, at least 30 per centum.

"(B) The percentages specified in subparagraphs (A)(ii) and (iii) shall be reduced to 10 per centum and 15 per centum, respectively, if the nonfederal source funds are derived from a state or local government, including tax exempt obligations of such governments.

"(C) The Administration shall delegate to each district office the authority to approve direct loans in the amounts specified in subparagraph (A)(i), (ii) and (iii) under the conditions specified in this Act without seeking higher approval within the Administration.

"(D) The Administration may transfer no more than 15 percentum of each of the total levels for direct loan programs as authorized in section 20 of this Act: *Provided, however,* That no loan program level authorized in such section may be increased more than 25 percentum by any such transfers: *Provided further,* That the Administrator is not authorized to transfer direct loan levels to deferred participation (guaranteed) loan levels and that any transfers shall be effective only to the extent approved in advance by the Appropriations Committees of the United States Senate and of the House of Representatives of the United States.

"(E) For purposes of this paragraph the term 'nonfederal sources' shall include, but not be limited to, state and local government funds (including the proceeds from tax exempt obligations of such governments), and funds derived from private financial institutions or private equity sources. In no event shall such term include funds derived directly from any grant or loan made, guaranteed or insured by the Federal government.".

SEC. 12. Subsection (a) of section 7 of the Small Business Act is amended by adding at the end thereof the following new paragraph:

"(17)(A) In the case of any applicant—

"(i) which performs abortion,

"(ii) which engages in research which relates, in whole or in part, to methods of, or the performance of, abortion,

"(iii) which promotes or recommends abortion, or

"(iv) which trains any individual to perform abortion, no financial assistance shall be available under this subsection which benefits such applicant with respect to any of the activities described in clause (i), (ii), (iii), or (iv).

"(B) Subparagraph (A) shall not apply to any activity described in clause (i) or (ii) of subparagraph (A) if all of the abortions performed, promoted, and recommended in such activity are in cases where the life of the mother would be endangered if the fetus were carried to term.".

SEC. 13. Section 15 of the Small Business Act is amended by striking subsections (d), (e) and (f) and inserting in lieu thereof the following:

"(d) For purposes of this section priority shall be given to the awarding of contracts and the placement of subcontracts to small business concerns which shall perform a substantial proportion of the production on those contracts and subcontracts within areas of concentrated unemployment or underemployment or within labor surplus areas. Notwithstanding any other provision of law, total labor surplus area set asides pursuant to Defense Manpower Policy Number 4B (32A CFR Chapter 1) or any successor policy shall be authorized if the head of the procuring Federal agency or his designee specifically determines that there is a reasonable expectation that offers will be obtained from a sufficient number of eligible concerns so that awards will be made at reasonable prices. As soon as practicable and to the extent possible, in determining labor surplus areas, consideration shall be given to those persons who would be available for employment were suitable employment available, Until such definition reflects such number, the present criteria of such policy shall govern.

"(e) In carrying out small business set aside programs, Federal agencies shall award contracts, and encourage the placement of subcontracts for procurement to the following in the manner and in the order stated:

"(1) concerns which are small business concerns and which are located in labor surplus areas, on the basis of a total small business-labor surplus area set aside;

"(2) Concerns which are small business concerns, on the basis of a total small business set aside;

"(3) Concerns which are small business concerns and which are located in a labor surplus area, on the basis of a partial small business-labor surplus area set aside; and

"(4) concerns which are small business concerns, on the basis of a partial small business set aside.

"(f) After priority is given to the small business concerns specified in subsection (e), priority also shall be given to the awarding of contracts and the placement of

subcontracts, on the basis of a total labor surplus area set aside, to business concerns which will perform a substantial proportion of the production on those contracts and subcontracts within areas of concentrated unemployment or underemployment or within labor surplus areas.".

SEC. 14. Section 8(e) of the Small Business Act is amended by adding at the end thereof the following new sentence:

"Whenever a procuring agency is required to publish notice of procurement actions, it (1) shall issue a solicitation for a procurement action only after at least fifteen days have elapsed from the date of publication of a proper notice of the action; and (2) shall foreclose competition under a procurement action only after at least thirty days have elapsed from the date of issuance of the solicitation, or, in the case of orders under a basic agreement, basic ordering agreement, or similar arrangement, the date of publication of a proper notice of intent to place the order.".

SEC. 15. Section 3(h) of the Small Business Act is amended as follows:

(a) by striking "availability of credit" and by inserting "availability of sufficient credit"; and

(b) by striking "conditions" and by inserting "conditions and at reasonable rates,".

SEC. 16. Section 3 of the Small Business Act is amended by striking from subsection (a) "*Provided,* That the Administration shall not promulgate, amend, or rescind any rule regulation with respect to size standards prior to March 31, 1981." and inserting in lieu thereof the following:

"*Provided,* That notwithstanding the waiver provisions of any other law, the Administration shall not promulgate, amend or rescind any rule or regulation with respect to size standards except in accordance with the procedures of chapter 5 of title 5, United States Code.".

SEC. 17. Section 302(a) of the Small Business Investment Act of 1958 is amended by adding at the end thereof the following:

"With respect to a company licensed pursuant to section 301(d), such capital and surplus shall include funds obtained directly or indirectly from an agency or department of a state government or the Federal government (excluding the Administration) for purposes of section 303 leveraging, provided that such funds:

"(1) are not taken into account with respect to meeting the requirements established by the preceding two sentences; and

"(2) were invested in or were legally committed to be invested in such company prior to July 29, 1980.".

SEC. 18. Section 502 of the Small Business Investment Act of 1958 is amended by striking "plant acquisition," and by inserting in lieu thereof "working capital, plant acquisition,".

SEC. 19. Section 503 of the Small Business Investment Act of 1958 is amended by striking all of paragraph (5) of subsection (b) after "is made" and by inserting the following:

": *Provided,* That the Administration shall not use the source or nature of the funds constituting the remaining percentum of the project cost as a criteria to approve or reject such guarantee; and".

SEC. 20. This Act shall take effect October 1, 1982: *Provided,* That the amendments made by sections 9(d) and 15 shall not apply to any disaster which commenced on or before July 2, 1980.

PURPOSE OF THE BILL

The Committee's bill, H.R. 6086, as amended, is comprised of changes in three SBA program levels; a requirement that SBA fully utilize its program levels and keep a record of applicants; a prohibition against SBA refusing to issue guarantees on pollution bonds simply because the project involves Industrial Revenue Bonds; a prohibition against SBA arbitrarily refusing to approve surety bond guarantees on contracts eligible under statutory provisions; codification of existing regulations on interest rates on guaranteed loans; a requirement that SBA follow the Administative Procedure Act if it revises its size standards; and a requirement that there be a 45-five day lead time for Federal procurements between publication of notice of a pending procurement and issuance of the contract.

In accord with the Committee's decision of last March to channel the limited amount of direct loans to areas of high unemployment, SBA's direct loan program has been extensively modified, and uniformity in application of labor surplus area procurements has been provided.

The bill codifies the current generally adhered to practice of SBA notifying the Small Business Committee before reprograming any program levels, and requires notification to the Committee before implementing any reorganization.

Finally, the bill clarifies the status of certain questions which have arisen concerning administrative restrictions on funding which SBA provides for its Development Company and Minority Small Business Investment Company Programs, and places certain restrictions on the use of SBA's 7(a) loans to facilitate abortions.

Introduction and Background

Chairman Mitchell introduced both H.R. 6086 and H.R. 5551. The latter bill has forty-two current cosponsors. Hearings on these bills and other pending legislation were held by the Subcommittee on SBA and SBIC Authority, Minority Enterprise and General Small Business Problems on April 28 and 29, 1982, at which the SBA Administrator and private sector witnesses testified. Due to reporting time constraints, on May 12 the full Committee discharged the Subcommittee from further consideration of the bill.

In subsequent action on May 12, 1982, the full Committee ordered the measure, as amended, reported to the House by a vote of 38 to 0.

Need for the Legislation

(A) AUTHORIZATIONS FOR PROGRAM LEVELS

Public Law 95-89 for the first time both authorized funding and set maximum program levels for all SBA programs through fiscal year 1979. Subsequent action in P.L. 96-302 and Public Law 97-35 set levels through fiscal year 1984.

It was recognized at the time the original funding levels were established for the three out years that adjustments might be necessary from time to time. The bill (H.R. 6086) provides necessary increases in three program levels.

I. Small business investment companies (SBIC's)

SBIC's are privately-organized and managed companies which provide equity capital, long-term loans, and management assistance to small business concerns. Under the Small Business Investment Act of 1958 and regulations issued by the Small Business Administration, SBIC's are authorized to borrow from the Federal Government under a guarantee supplied by SBA. SBIC's pay the full cost of money to the Treasury plus a premium for these borrowings. Matching these Government funds with their private capital, SBIC's have financed almost 50,000 independent businesses by providing over $4 billion in equity capital and long-term credit.

SBIC's disbursed more dollars in calendar 1981 than ever before—almost one-third of a billion dollars. From a low of $123

million in 1975, SBIC's have been more active each year and the total of $333 million in 1981 represented an increase of 170 percent in 5 years.

A NASBIC-commissioned study by Arthur D. Little, Inc. and Deloitte, Haskins & Sells on the economic impact of SBIC financing on small businesses showed the average growth rate of SBIC portfolio companies was ten times greater than all American small businesses in terms of increased sales, employment, and profits. The study found further that the Federal Government received $110 in additional tax receipts for each $1 it spent to support the SBIC program, and that the cost to the Federal Government of creating a permanent new job through the SBIC program was only $312. The accounting firm calculated that SBIC's financed the creation of 147,730 new jobs in the ten years from 1970 through 1979.

Two additional statistics on SBIC's role to small business are revealing.

First: SBIC's allocate a large share of their dollars to startup financings. SBA data show that SBIC's put 41 percent of their disbursements in firms one year old or less in calendar 1981.

Second: A large percentage of SBIC dollars are disbursed in the form of equity-type or straight equity financings. In calendar 1981, 35 percent of the dollars went out as straight equity with another 32 percent in the form of debt with equity conversion features. For the first quarter of 1982, SBIC outlays were 41 percent in the form of straight equities (the highest ever) with another 32 percent of the dollars going for equity-type securities.

Based on the accelerated pace of SBIC disbursements, it is apparent the industry will seek an increased amount of borrowings ("leverage") from SBA during the coming months. Under present law, SBA will be able to guarantee only $160 million in leverage in fiscal 1983 and 1984. This would not sustain the present rate of investment.

The problem is compounded by the fact that almost $155 million in outstanding SBA leverage will mature in fiscal 1983 and another $86 million in fiscal 1984. Under Federal budget accounting procedures, the "rollover" or refinancing of these maturing debentures count as if they were new guarantees. Therefore, the present ceiling on fiscal 1983 leverage could be virtually exhausted merely by a rollover of maturing leverage, leaving no borrowing ability for new licensees or for those SBICs which have not drawn down the dollars to which they are entitled by law.

If it appears that SBA will not be able to fill the needs of eligible SBICs for leverage, very few individuals or institutions will organize new SBICs and very few existing SBICs will increase their private capital. Obviously, this will adversely affect entrepreneurs seeking SBIC dollars to start new businesses and owners of smaller firms requiring venture capital to expand their companies to bring new products and new services to the American economy. The availability of adequate leverage is essential to the continued growth of the SBIC industry.

II. Economic opportunity loan guarantee levels

Pursuant to section 7(a)(11) of the Small Business Act, SBA is empowered to make or guarantee loans to small business concerns

located in urban or rural areas with high proportions of unemplyed or low-income individuals, or which are owned by low-income individuals. These loans, commonly referred to as Economic Opportunity Loans (EOLs), have the same terms, maturities and restrictions on the use of proceeds as SBA's regular business loans.

The Administration has requested an EOL guarantee program level of $100 million in fiscal year 1982 and $176 million in each of fiscal years 1983 and 1984. The presently approved program level for EOL guarantees is $60 million in each of the three aforementioned years.

At first review of this request, the Committee failed to understand the rationale supporting the Administration's proposal. During the first six months of this fiscal year only $4,378,000 of EOL guarantees were made. This is an annualized rate of less than $9 million, and the Administration's request is to increase this program level to $100 million *for this year.* Further, since the inception of the EOL program, it has never generated more than $25 million in activity during any one fiscal year and yet, your Committee is now requested to increase this program level to $167 million in each of the next two years.

The concern of your Committee, however, relating to the motivation and rationale supporting these requested increases was somewhat dispelled by SBA at hearings which were recently held on this and related issues. At that hearing, SBA announced that it was about to undertake a new effort "with our regional administrators, with our banking partners and all involved in the system to improve our record in this area."

Your Committee is extremely anxious to review the details of this new initiative to implement a program of vital importance to this Nation's economically distressed areas. In order to further this purpose and provide the incentive for its expansion, the bill would grant the requested increases for fiscal years 1983 and 1984. Since fiscal year 1982 is more than half over and since over 92 percent of program authority is currently available, there is no need to raise the program level for this year.

Of course, if the SBA does not implement the new initiative it has promised in this area, your Committee would be constrained not only to reevaluate the EOL program levels for succeeding years but also to reevaluate the Administration's motivation for seeking program increases in the first place.

III. Minority Enterprise Small Business Investment Companies (MESBICs)

Minority Enterprise Small Business Investment Companies (MESBICs) are SBICs which specialize in providing equity funds, long-term loans, and management assistance to small business concerns owned by socially or economically disadvantaged persons. MESBICs are governed by the small regulation as SBICs, with some modifications.

The MESBIC agrees to make investments solely in small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Under the Small Business Investment Act of 1958, MESBICs are eligible for up to four tiers of leveraging from the SBA on their invested private capital. This private/public sector partnership serves to maximize the pool of funds available for investment in the minority small business community.

In 1981 alone, MESBICs invested $25.8 million of private capital, combined with $28.5 million of SBA leverage dollars, for a total of $54.3 million targeted for the minority small business sector. This amount provided for the financing of 742 businesses, whose total estimated revenue was $185.8 million. In addition, an estimated 3,749 jobs were created through 1981 MESBIC financing activity.

By the end of 1981, over $112 million in private capital had been invested in the MESBIC industry, nearly matching the government's contribution of $142 million. When capital attracted from other private sector sources by initial investments made by MESBICs are taken into account, the private-public funds ratio jumps to 6:1.

The accomplishments and continuing contributions to the American economy of the MESBIC industry have been recognized and acknowledged by the Administration proposal for increased funding for the MESBIC program in its fiscal year 1983 budget. The Committee is in complete accord with this proposal.

(B) SPENDING LEVELS

Prior to October 1, 1977, the Small Business Act authorized the appropriation of such sums as were necessary to carry out the provisions and purposes of the Act; and the Small Business Investment Act authorized the appropriation of specific cumulative dollar amounts to carry out the programs authorized by that act. Effective October 1, 1977, open-ended authorizations for programs and payments of salaries and expenses were sharply curtailed. H.R. 692 (P.L. 95-89) amended the Small Business Act to specifically authorize the dollar amount of program levels by fiscal year for fiscal years 1978 and 1979; to authorize the appropriation of the dollar amount needed to carry out the program levels specified; and to authorize the appropriation of amounts necessary to carry out Small Business Act programs for which specific dollar authorizations are not provided.

At that time, the Committee felt that more certainty in the way small business assistance was to be administered, coupled with effective oversight required these changes. The Committee continues to believe that three year authorizations are the proper approach, giving Congress, the Executive, and the Small Business Community a clear indication of goals and priorities for a reasonable period of time. The Committee believes that this budgeting method is the only way to assure that the Congressional intent in the Small Business Act will be strictly adhered to by SBA. This practice was continued in Public Laws 96-302 and 97-305 which provide authorizations through fiscal year 1984.

Yet the events of recent months indicate that specific program authorization levels and appropriations may not alone provide assurance that Congressionally mandated objectives will be met. Specifically, the agency (sometimes at OMB's direction) has over this

94-276 O - 82 - 2

period adopted a series of administrative actions purposefully designed to lessen the demand for its programs below levels approved by Congress and the President. Indeed, it appears that a previous Administrator may have made an attempt to delay loan commitments.

For example, SBA's own records show that through the first six months of this year the agency has approved only $53 million in direct loans. Thus, approximately 40 percent of this year's direct loan program authorization is not being used.

At the Committee's April 28 hearing on H.R. 6086, SBA's new Administrator maintained that the low rate of loan making was due to a lack of demand. He recognized, however, that a problem exists, and said that he had already communicated with field offices to end any confusion. Obviously, that communication did not solve the problem. The Committee's action in this bill is designed to send a clear message that this cannot continue. However, the Committee also wishes to be clear that it does not wish to see a return to previous administration actions that:

1. Rewarded loan officers for the number of loans made, but not the quality of these loans.

2. Resulted in a program with repayments current for only 62 percent of the direct loan portfolio and 79 percent of the loan guarantee portfolio.

The Committee will continue to watch this situation quite closely.

Another uncertainty is the commitment of SBA to use the full amount of the guaranteed lending authority available through the Congressional authorization and appropriation process. Under existing law the statute specifies the maximum amount of loans and guarantee assistance which may be made available but does not require any minimum.

The uncertainty remains that SBA, by regulation, could reduce the ceilings on interest rates, on its guaranteed loans as it did last August.

Although this proposal was not implemented, such action could result in the majority of banks refusing to participate in the program. The Committee continues to believe this to be the case.

Another example of possible administrative action, whether intentional or not, which may result in program funds not being fully utilized, was brought to the Committee's attention by the MESBIC industry.

The Small Business Administration requires MESBICs to adhere to certain requirements before becoming eligible for leverage funds. These include: filing a complete application; demonstrating a need for funds (65% of funds must be committed or invested), an examination once a year by the SBA Inspector General's office and meeting credit and regulatory criteria. Those investment companies that meet this criteria should be able to obtain leverage funds within thirty to sixty (30–60) days. Two problems have complicated the smooth processing of leverage applications:

(1) the Inspector General, as is required by law, is not able to examine all investment companies within a twelve month period. Delays in completing examinations have precipitated potentially damaging finacing delays for the investment company; and

(2) when examinations are completed it has taken some MESBICs as many as three to six (3–6) months to receive their examination letters.

These two problems have created a situation in which an investment company who applied for funds in fiscal year 1982 may not actually receive leverage until fiscal year 1983.

The Committee is also concerned about recent actions by SBA to curtail the surety bond guaranty program and the pollution control guarantees program. However, H.R. 6086 addresses these directly.

In summary, action is necessary to require SBA to refrain from administrative action which would make unavailable the amount made available by law and agreed to by the President and the Congress unless there is a lack of qualified applicants for assistance.

(C) POLLUTION CONTROL FINANCING

Congress recognized that small businesses, because of their generally limited credit history and the smaller size of their financing requirements, are often unable to obtain long-term, low-interest rate financing through revenue bonds. The high cost and nonproductive nature of required pollution control facilities are often more than small businesses can be expected to handle. Therefore Congress authorized SBA, commercial banks, and State authorities to make long-term, low-interest financing available to well-established small businesses in much the same manner the corporate giants obtain financing for pollution control facilities: through sale of tax-exempt, pollution control revenue bonds issued by a State or municipal authority. This is made possible through SBA's guarantee of the small concern's obligation under a contract involving the facility.

Through this program, small businesses obtain long-term (up to 30 years) and low-interest rate financing for required pollution control facilities.

On December 31, 1981, SBA announced its decision no longer to approve guarantees for contracts which involve projects constructed with proceeds of tax-exempt Industrial Revenue Bonds. Despite Congressional statements that this was contrary to the intent of the statute, SBA has consistently refused to restore the availability of such guarantees for tax-exempts.

The SBA Pollution Control Contract Guarantees Program has played a vital role in minimizing the discrimination small businesses have traditionally faced. Investors view these concerns as high risks and are therefore reluctant to provide them with capital to finance pollution control facilities. By making guarantees available to these firms, the SBA program has enhanced the financial attractiveness to lenders of providing financing to small businesses thereby enabling them to comply with environmental requirements.

Since its inception, this SBA Guarantee Program has been a revenue raiser through the fee SBA levies on businesses using the guarantee. To date, the fee system has generated $25 million. Translated into program outputs, this means that the program is self-sustaining. It costs the Federal Government nothing and, more importantly, fosters economic activity throughout the country.

Unfortunately, the SBA and OMB have refused Congressional directives to heed that tax-exempt pollution contract guarantees are of vital importance to the survival of businesses. It is important to note that in many instances the small concern's net worth is exceeded by the costs of these pollution control facilities. A business that does not have the assets to use as collateral for a taxable loan will have to close its doors or be in non-compliance with environmental mandates. These alternatives are unacceptable. Therefore, the Committee must legislatively correct the misunderstanding of the purposes of the program.

This action also addresses the issues of certainty and continuity in SBA program administration. It will restore the program to the status it held prior to December 31, 1981. This program has been subjected to constant turmoil and uncertainty over the past year. Congress authorized $250 million for loan gurantees in fiscal year 1982. However, OMB determined unilaterally that only $50 million in such guarantees was necessary. Soon after this decision, OMB decided that $95 million would be necessary, but the issue of tax-exempts remained uncertain. Finally, OMB determined that $150 million would be allocated in fiscal year 1982, but the majority of the allocation would only be for projects involving taxable financings. These decisions led to a halt in program activity, because of the restrictions and uncertaintly over program allocation. Congressional action is required to reinstate this program.

(D) SURETY BOND GUARANTEES

To restore certainty and continuity to another SBA program, the Committee is also forced to express its disapproval of the recent regulatory action whereby SBA reduced the maximum allowable amount of guarantees made through its surety bond guarantee program.

Although the statutory maximum for such guarantee is $1 million, SBA on January 15 administratively lowered this limit to $250,000 or 125 percent of any previously guaranteed contract, whichever is less. This action was done without prior notice to or consultation with the Congress and has been defended by the agency as part of the administration's efforts to lower overall Federal guarantee activity.

During fiscal year 1982, Congress has approved a $1.2 billion program level for surety bond guarantees. The administration has requested that this be lowered to $1.08 billion, the same amount which they have proposed for fiscal year 1983. As a preliminary step in the fiscal year 1983 budget process, the Committee has recommended to the Budget Committee that sufficient guarantee authority be provided for a $1.296 billion program. This represents the 1982 level plus an 8 percent increase for inflation.

SBA's restrictions on the size of surety bond guarantees will create a hardship for many small contractors. The Committee, in addition to authorizing a program level sufficient to make such restrictions unnecessary, has determined further legislative action is necessary to avoid further uncertainty. This must be done despite the fact that on April 1, SBA eliminated the $250 thousand cap and

increased the percentage limitation from 125 percent to 200 percent.

Action is being taken to expressly prohibit SBA from limiting the maximum amount of a bond below the statutory limit and from utilizing a percentage increase limitation on surety bonding; that action does not, however, preclude SBA from evaluating each application on its merits and approving guarantees in lower amounts where the individual application should receive such treatment.

(E) GUARANTEED LOAN INTEREST RATES

Well over ninety percent of SBA's business lending activity is accomplished through guaranteed loan programs. Typically, these programs provide for a 90-percent guarantee on loans extended to small concerns by banks and other financial institutions. The statute provides that the interest rate charged by these lenders must be legal and reasonable "but shall not exceed a rate prescribed by the Administration." SBA, therefore, has used its general rulemaking authority to promulgate, from time to time, maximum allowable interest rates.

For the last several years, this maximum has been set at up to 2¼ percent over low New York prime on loans having a maturity of under seven years and up to low New York prime plus up to 2¾ percent for loans having a maturity of seven years or longer.

Within the last year, SBA published a proposed rule which, if made effective, would have eliminated the 2¼-2¾ percent "spread" over prime. As a result of this publication, your Committee received numerous complaints from the banking community. These institutions argued that elimination of the spread would reduce the yield on SBA guarantee loans to a point where they would no longer become an attractive bank investment. Since there are already ample investment opportunities competing for bank funds, there is little economic incentive to participate in a government program which would yield a lower rate of return than available from these other types of investments. Many banks, therefore, asserted that they would abandon the SBA program if the proposed regulations were adopted.

While your Committee is, of course, deeply concerned about today's high interest rates and its devastating effects on small business, it does not believe the remedy to be reducing the interest rates on SBA guaranteed loans. While this may have some surface attraction, it would result in a far more serious problem—the unavailability of credit to small business.

Even though the proposed SBA regulation eliminating the spread has not been adopted, its promulgation alone has caused a "chilling effect" on bank participation in the guarantee program. Banks are hesitant to adopt internal procedures and spend the time, money, and effort to develop and process potential SBA guarantee applications when they have little or no assurance that the "rules of the game" will not be changed in mid-stream. To alleviate this concern and to provide the necessary assurance that some continuity will be preserved, it is necessary to legislatively freeze SBA's present interest rate maximum for at least one year.

Your Committee has not yet taken a position whether the present interest rate maximum is the most appropriate. However, SBA is presently exploring this issue. In its report to your Committee, it is expected that the Agency will report on: (1) Whether the interest rate should be the product of the free market without government regulating a maximum and, if so, what effect this would have on small business and the guarantee program; (2) whether some other base rate (rather than low New York prime) should be uses; (3) whether participating banks should be given their option of selecting a base rate from several such rates approved by SBA; (4) what spread rates, if any, should be used and how such rates are determined; and (5) the efficacy of the presently allowed quarterly fluctuation period as contrasted with daily fluctuations.

Until these questions are answered, however, it is necessary to freeze the present maximum to preserve program continuity.

(F) RECORD OF APPLICANTS

In these times of economic chaos for small business knowledge of loan and assistance demand is more important than ever to the Congressional authorization process. While small business demand for assistance is uncertain, what the administration forced upon the small and minority business community in the last budget for fiscal year 1982 is known.

The Small Business section of the Budget Reconciliation bill, Public Law 97-35 provided a 32 percent reduction in SBA business lending for fiscal year 1982 and substantial increases in interest rates for both regular business loans and disaster loans. Interest rates for SBA direct business loans were raised to the cost of money to the Federal Government plus up to 1 percent. Currently this figure is 16 percent.

The administration's newly-proposed 1983 budget has even further cuts in fiscal year 1982 and new cuts for fiscal year 1983.

The major changes proposed by the administration include:

In 1982, there would be even further reductions in guaranteed loan levels, surety bond guarantees and pollution control bond guarantees.

In 1983, there would be further reductions in guaranteed loan levels, surety bond guarantees and pollution control bond guarantees.

In 1983, there would be further reductions in guaranteed loan levels, and the elimination of direct regular business loans, an important source of capital to minority firms. Also to be eliminated: handicapped, economic opportunity, and solar and energy conservation direct loans.

Ancillary to the provisions in H.R. 6068 which would provide financing in the amount agreed upon in appropriations acts and signed into law by the President, unless there is a lack of qualified applicants, is the requirement to keep a record of inquiries regarding SBA assistance. This is in order that Congress might project demand more accurately. The Committee remains concerned that SBA, whether on its own volition or due to OMB pressure, is arbitrarily indicating that no assistance is available.

SBA's own records show that, for example, through the first six months of this year the agency has approved only $53 million direct loans. Thus, approximately 40 percent of this year's direct loan program level is going unused.

SBA maintains that it is simply lack of demand and not their lack of action and points to a memo sent by Central Office to all of the District Offices advising them of the availability of more direct loan money if they need it.

SBA opposes the mandatory spending provision and this recordkeeping provision maintaining that they are already keeping these records. By the Chairman's request to transmit records for all inquires received by any district or branch office on April 29, the Committee received records from approximately eighty offices. This transmittal clearly show that many of the offices are not maintaining these records. A comparison of the numbers shows a great disparity in recordkeeping. It appears that not all inquiries are recorded; the information which is recorded is often illegible and certainly is incomplete.

The Committee staff also contacted a number of district offices to ascertain the extent of their recordkeeping and the results are as follows:

1. Baltimore District Office did not ask for the name and address when one of our staff called and said he wanted an SBA direct loan; it did say that there was a nine-month waiting list and that if the inquirer would give his name and address, he would be sent an application when his name moved up on the waiting list.

2. A recording at the Los Angeles Office stated all personnel were busy but that direct loans were not available; an SBA employee who then answered the incoming call at the end of the recording again stated that they were not giving out any loans other than guranteed loans.

3. Calling the general information number for the New York District Office resulted in a recording which states that SBA guaranteed loans are the primary means of financial assistance and that although there is a limited budget for direct loans, the demand for these loans far exceeds the available funds.

4. Eight calls were made to the Phoenix District Office and names and addresses were given; only four of these eight names appears on the Phoenix list of inquiries:

5. At the Washington, D.C. District Office, an inquirer was told that there are one hundred and fifty pending applications for direct loans.

If the administration is to use the sophistical argument that less "current demand" should result in less program authority, then statistics on demand should at least be accurate and complete. The fact is that SBA does not now keep a record of applicants or those who inquire about SBA assistance and thus is never in a position to give a valid indication of program demand.

In a letter dated 5, 1982, the SBA Administrator advised the Committee that additional information on loan applications and demand will be collected and provided to the Committee. However, since this is a policy which would be easily overturned by SBA or OMB, the Committee believes that legislation is needed to require SBA to keep a record of the names and addresses and amounts re-

quested by loan applicants or those who inquire about the loan availability or funding.

(G) SMALL BUSINESS COMMITTEE NOTIFICATION

In furtherance of the Committee's oversight responsibilities under Rule X of the House of Representatives and in the interest of SBA program certainty and continuity, two procedural steps need to be implemented.

With respect to reprogramming requests that are deemed to be necessary, the Committee expects to follow closely the reprogramming procedures here outlined.

The Chairman of the Appropriations Subcommittee on the Department of State, Justice, and Commerce, the Judiciary, and Related Agencies, in addition to the Chairman of the House and Senate Small Business Committees will be notified in writing a minimum of 15 days prior to—

(1) Reprogramming of funds, whether permanent or temporary, in excess of $250,000 or 10 percent, whichever is less, between programs or activities. This provision is also applicable in cases where several activities are involved with each receiving less than $250,000. In addition, notification of reprogramming actions which are less than these amounts is expected if such actions would have the effect of committing the agency to significant requirements in future years.

(3) Creation of new programs or substantial augmentation of existing programs.

(4) Relocation of offices or employees.

(5) Reorganization of offices, programs, or activities.

The Committee also expects that any items which are subject to interpretation will be reported.

Second, the Committee desires to be kept abreast of any agency internal reorganization as has been past practice and also any Executive Reorganization pursuant to 5 U.S.C. 902-912 which would affect the Small Busines Administration. Legislation to extend the President's reorganization authority has now passed the Senate and is pending in the House.

Notwithstanding the fact that a reorganization plan is effective only after Congress has been in session sixty days without either House passing a resolution of disapproval, earlier attention to such a plan by the authorizing Committees is necessary.

(H) PUBLICIZING PROCUREMENT ACTIONS

This Committee is charged with the responsibility to carry forward a policy embodied in the Small Business Act of 1953, "to insure a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government . . . be placed with small business enterprise. . ." However, the small business share of Federal contracts continues to be inadequate. Total Federal contract dollars awarded to small business over the last ten years have grown at only a 1 percent average annual rate.

Congress has always insisted on small business participation in Government procurement because it improves and broadens the competitive base and the defense industrial base; provides innova-

tive technology; lowers procurement costs; performs a vital role in industrial mobilization; and disperses procurement funds industrially and geographically.

Therefore, the Chairman and Representative Ireland introduced H.R. 5551, legislation which will improve the small business community's access to Federal procurement information and increase contracting opportunities.

Section 8(e) of the Small Business Act requires that Federal contracting opportunities be published in the Commerce Business Daily. This supposedly insures maximum competition for Government contracts. The reality, however, is that small firms do not have sufficient time to prepare bids and participate in Government procurement. Improved contracting opportunities for small concerns will lead to greater competition and lower prices for the Government.

It is administrative practice to publish procurement notices in the Commerce Business Daily ten days before the issuance of a solicitation, but the practice is not constant, and a notice often first appears on the date a solicitation, is issued. In addition, regulations presently provide for a minimum bidding time of twenty calendar days except where "special circumstances" call for a shortened time period. Therefore, instead of a cumulative period of thirty days for solicitation and bid, you may find an arbitrarily imposed timeframe which exists solely at the procuring agency's discretion. The small firm is at a clear disadvantage since it often lacks the financial and human resources necessary to monitor this discretionary, fluctuating process.

The Committee decided it was necessary to amend the Small Business Act to require a procuring agency to give small businesses fifteen days from the appearance of a notice in the Commerce Business Daily to request copies of a solicitation. An additional thirty days from the issuance of the solicitation would be offered before bids are due. These forty-five days would afford small firms the time to monitor the publication and prepare a bid for proposal. Without creating additional costs for the Commerce Business Daily, this will aid small firms in developing their capacity to do business with the Federal Government and will begin the process of simplification of contracting procedures.

(I) SIZE STANDARDS

Congress established a broad definition of small-business in the Small Business Act of 1953: "a small-business concern . . . shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation. In addition to the foregoing critiera the Administrator, in making a detailed definition may use these criteria, among others: Numbers of employees and dollar volume of business . . ."

Establishing "size standards," i.e., the precise specification of "small," is delegated to the Administrator of the SBA. The size standards determine a company's eligibility for SBA assistance, usually in the form of direct or guaranteed loans; management or technical assistance; or special set-aside programs for minorities,

94-276 O - 82 - 3

the handicapped or other economically disadvantaged entrepreneurs.

The existing standards have often been criticized as confusing and lacking a comprehensive, underlying logic. The complex rules often leave a business qualifying for some programs, but not others, because eligibility may vary from one program to another.

Changes to the size standards have been the center of controversy since 1979, when SBA officials decided the hodge-podge of rules needed revamping. If accomplished, the revisions will be the first major changes since the 1950's.

In March 1980, SBA proposed a revision to its size standards which was made inoperative by P.L. 96-481 which prohibited any size standard change until March 31, 1981.

In March 1980 proposed rulemaking, SBA officials decided to use a single measurement of size the number of employees—with limits differing by industry—based on an assessment of competition.

Throughout this revision procedure SBA has maintained that promulgation of rules and regulations regarding size standards is not mandatory under the Administrative Procedure Act. But they have voluntarily brought themselves under the Act by regulation.

The safeguard is needed that any size standard changes be in accordance with the Administrative Procedure Act.

The long-expected next proposal was published on May 3, 1982, as a "Second Advance Notice of Proposed Rulemaking." The Committee wants to make sure that SBA continues to follow the APA in setting new size standards, i.e., publishing the notice of proposed rulemaking for extensive public comment. Full public participation and congressional scrutiny would thereby be assured.

(J) MESBIC FINANCING

Under the Small Business Investment Act of 1958, as amended, MESBICs can receive up to four tiers of SBA leveraging on their "private capital." In an effort to promote the MESBIC industry, in its regulations the SBA allows for the inclusion of "nonprivate funds" in its interpretation of private capital for leveraging purposes.

Based on this provision, public funds, accompanied by large amounts of private funds, were being invested in the MESBIC industry for several years. These private funds were largely dependent for their effectiveness on the leveragability of the public funds they complemented. By mid 1980, over $17 million in Government funds, in concert with over $10 million in private capital, had been invested in the MESBIC industry as a result of the public funds leverage regulation.

Then, in July 1980, public funds leveraging was suddenly halted by a decision of the Comptroller General. The decision claimed the leveraging of MESBICs' Federal funds to be illegal, except in the case of specific statutory language to the contrary. This decision was challenged and confirmed by a later Comptroller General's decision in January 1981. Thus, the potential utility of over $100 million, targeted to one of this Administration's highest priorities, the small business sector, has jeopardized.

The SBA's stance on this issue has been inconsistent and difficult to interpret. By delaying a formal reaction, it has incurred great costs to MESBICs having public funds. In some cases public funds MESBICs have been exposed to legal action taken by the business they had made commitments to based on their legitimate expectations of public funds leveraging.

Therefore, for those MESBICs which prior to the GAO ruling had relied upon the use of public funds, legislation is necessary to clarify that the words "private capital," as used in section 303(c)(2)(iii) of the Small Business Investment Act of 1958, include not only capital which has been raised from private individuals, partnerships or corporations, but also, for purposes of leveraging, non-private or public funds such as, funds received from the Department of Housing and Urban Development, the Economic Development Administration, the Federal Railroad Administration of the Department of Transportation, and the Community Services Administration among others. This clarification is a one-time change and applies only to those MESBICs which relied to their detriment on earlier policy.

(K) DEVELOPMENT COMPANY WORKING CAPITAL

At the present time small businesses cannot obtain working capital through development companies. This means they must go elsewhere or frequently suffer due to this lack of money.

The Committee recognizes that all small businesses need working capital and that a development company, with its full time professional employees, should be able to serve as a one-stop financial center.

Providing working capital makes the small business loan package more workable and makes the capital asset loan supplies by the development company more secure.

(L) SOURCE OF DEVELOPMENT COMPANY FUNDS

When Congress established the 503 Development Company Program in Public Law 96–302 certain requirements were set for program eligibility. To qualify for this program, a development company must have: (1) A full-time professional staff with capability to package, process, close, and service its loans: (2) Professional management ability, including adequate accounting, legal and business-servicing abilities, (3) A board of directors or membership, which meets on a regular basis to make management decisions for the company including decisions relating to the making and servicing of loans by such company.

Income received by the development company through its assistance to small businesses cannot exceed that necessary to repay with interest the debentures it issues, to pay taxes and insurance, and to recover administrative costs.

These requirements resulted in a greater commitment of development companies to the small business community.

By statute, guarantees on behalf of development companies under section 503 may be used to provide funding only for up to one-half of project cost. SBA has chosen to refuse guarantees if the non-SBA half is partially or wholly funded by Industrial Revenue

Bonds. This arbitrarily frustrates Congress' attempt to provide desperately needed capital to small concerns.

It is necessary to amend the Small Business Investment Act of 1958 to prohibit SBA from using the source or nature of the other funds as a criteria for eligibility.

(M) TECHNICAL AMENDMENTS

Two sets of technical amendments to the Small Business Act are necessary. P.L. 97-35, last year's reconsideration bill, did not update cross references to individual separate loan programs which were consolidated into section 7(a).

Also, corrections need to be made to technical errors regarding the disaster changes made by last year's reconciliation bill.

(N) LABOR SURPLUS AREA PROCUREMENT

The statutory authority creating a permanent labor surplus area procurement (LSA) program is found in section 15 of the Small Business Act. However, that section contains a number of technical errors which could be a potential source of confusion for program administrators. In addition, because of legislation passed subsequent in time to section 15, there is a question regarding the applicability of its provisions to all agencies of the Federal Government. There is a clear need, therefore, both to cure the technical deficiencies contained in present law and to dispel any ambiguity regarding the scope of this section's applicability.

(O) LIMITATION ON USE OF SBA LOANS

At the Committee's markup session on May 11, 1982, the Committee adopted an amendment to H.R. 6086 which would prohibit SBA to make or guarantee loans to potential borrowers involved in abortion or abortion related activities.

An exception would be made for applicants which perform or recommend abortion to save an endangered mother's life.

(P) LOAN RESTRICTIONS AND PRIORITIES

Pursuant to section 7(a) of the Small Business Act qualified small business concerns may obtain loans for certain specified purposes directly from the SBA. However, before a small firm may be extended such financial assistance it must demonstrate that the requested loan is not available from financial institutions and, further, that such credit would not be extended even with an SBA guarantee of the loan.

This program of direct lending to small business concerns has been the subject of criticism because of three principal reasons.

First, your Committee is in receipt of numerous complaints and charges that SBA has mismanaged the expenditure of direct loan funds. Present law does preclude SBA from extending *any* financial assistance unless there is a reasonable assurance of repayment. However, the statute does not specify the precise areas of scrutiny which should be made an integral part of the credit snalysis. Further, nowhere in the law is there a requirement that SBA afford direct loan recipients priority use of the agency's management and

technical assistance programs. Your Committee is of the firm opinion that these considerations warrant the clear Congressional guidance found in this bill and that adherence to these newly imposed requirements will, over time, yield a loan program resulting in more benefit to small business and less loss to the government.

The second area of concern relates to the allocation of scarce resources. Since the amount of direct loan funds is extremely small compared with estimates of legitimate demand, your Committee has concluded that such funds should be used in a manner best calculated to yield the highest possible return to the taxpayer. In order to achieve this purpose, it is necessary that direct loans be positively correlated with job creation potential and, further, that the allocation of such funds to each SBA field office be based upon that area's need for economic stimulus as measured by the number of unemployed residing in that district.

Third, it is a concern of your Committee that Federal funds are "leveraged" to the extent practical with non-Federal resources. Matching loans provide an ideal opportunity to further this goal. By requiring the injection of non-Federal funds to accompany each direct loan, the SBA would achieve greater economy in the usage of this scarce resource and thereby be able to serve more small businesses. In addition, this proposed requirement would also have the effect of attracting more local capital for the benefit of our nation's small business community and promote the greater involvement of state and local governments in this effort. Your Committee firmly believes that legislation is, therefore, needed to meet these vital needs.

EXTENSION AND REAMORTIZATION OF LOANS

During hearings on H.R. 6086, questions were raised concerning SBA's policy on extensions and reamortization of loans as contrasted to refinancings. The Administration has assured the Committee that whenever an extension and/or reamortization request is received by the SBA, it will not, presuming other requirements are met, require any interest rate increase. The Administration intends to differentiate between extensions and refinancings in that the latter request includes a request for additional funds.

WHAT THE BILL WOULD DO

Program levels.—H.R. 6086 would increase existin, authorized program levels for 1983 and 1984 for MESBICs, SBICs and EOL guarantees as follows:

I. The existing authorization for SBA's purchase of debentures and preferred securities from MESBICs is $37 million per year in each of fiscal years 1982, 1983, and 1984. The bill would increase it to $41 million in 1983, and 1984.

II. The existing authorization for guarantees of debentures of SBICs is $160 million for each fiscal year 1982 through 1984. The bill would increase it to $250 million in both fiscal year 1983 and 1984.

III. The existing authorization for Economic Opportunity Loan guarantees is $60 million in each of fiscal years 1982 through 1984. The bill would increase it to $167 million in 1983 and 1984.

Spending levels.—Under existing law the Small Business Act specifies the maximum amount of loans and guarantee assistance which may be made available but does not require any minimum. H.R. 6086 would require SBA to approve assistance in the amount made available by law and agreed to by the President unless there is a lack of qualified applicants for assistance.

This provision would not deny SBA administrative flexibility to respond to changes in circumstances because the amendment expressly recognizes and permits changes by reprograming requests if approved by the Appropriations Committees.

Pollution control financing.—Under existing law SBA has taken the position that it need not approve guarantees under the Pollution Control Guarantees program if the proceeds for the construction are from tax-exempt state or local Industrial Revenue Bonds. H.R. 6086 would expressly prohibit the Administration from denying the guarantee solely because such tax exempt bonds are involved.

The bill also would clarify that the changes regarding IRBs and pollution control bonds is retroactive and applies to applications for the program pending on January 1, 1982, or made after December 31, 1981.

Surety bond guarantees.—H.R. 6086 would expressly prohibit SBA (or SBA upon instructions from OMB) from limiting the maximum amount of a bond below the statutory limit of $1 million and from utilizing a percentage increase limitation except on a case-by-case basis. Although SBA may have eliminated most of the problem with its April 1 change, nonetheless it can just as easily reverse itself again. Therefore, H.R. 6086 settles the matter by statute.

Guaranteed loan interest rates.—The Small Business Act does not have an expressed interest rate for the 7(a) Guaranteed Loan Program. Therefore, under existing law SBA has used its discretion to set guaranteed loan interest rate maximums at prime plus 2¼ percent on loans with maturities of less than seven years and at prime plus 2¾ percent on loans with maturities of seven years or more. H.R. 6086 would set the maximum rate at not to exceed the prime plus percentages now in existence via regulation and, for the time being, provide certainty in the setting of interest rates.

However, the requirement that the existing "prime plus" formula as set by regulation not be changed only extends until June 30, 1982, sufficient time to permit full review of this matter and detailed examination of alternatives.

Record of applicants.—SBA does not now keep a record of those who inquire about SBA assistance and thus is never in a position to give Congress a valid indication of program demand. H.R. 6086 would require SBA to keep a record of the names and addresses and amounts requested by loan applicants or those who inquire about loan availability thereby giving Congress a better idea of demand for assistance.

Small Business Committee notification.—The bill, H.R. 6086, would codify the current generally adhered to practice of SBA notifying the Small Business Committees, as the Appropriations Committees are now notified, before reprograming any program levels and to require that SBA notify the Committees before implement-

ing any agency reorganization or an Executive reorganization under 5 U.S.C. 902-912.

Loan program technical amendments.—The bill would update cross references to individual separate loan programs which were consolidated into a section 7(a) loan program in last year's reconciliation bill, P.L. 97-35. The bill also would change technical errors in reference which were also in P.L. 97-35. No substantive changes are involved.

Publicizing procurement actions.—H.R. 6086 would amend the Commerce Business Daily provisions presently in section 8(e) of the Small Business Act to establish minimum notice requirements for Federal procurements advertised in the Commerce Business Daily: fifteen days between publication of the notice and issuance of the request for bids or proposals and an additional thirty days between such issuance and awarding of the contract.

Technical disaster program amendments.—Sections 9(d) through 13 of H.R. 6086 would correct technical errors regarding the disaster changes made by last year's reconciliation bill. No substantive changes are involved.

Size standards.—H.R. 6086 would expressly mandate that any size standard changes be in accordance with the Administrative Procedure Act, a practice which SBA has followed in the past.

MESBIC financing.—H.R. 6086 would allow MESBICs which relied on an earlier policy that allowed MESBICs to leverage other Federal financing to obtain SBA financing to leverage funds obtained prior to the change in policy.

This provision applies only to those funds invested in MESBICs prior to a decision of the Comptroller General of the United States dated July 29, 1980. Such funds would retain eligibility for up to four tiers of SBA leverage.

Development company working capital.—H.R. 6086 would expand the use of financial assistance provided by SBA to development companies to include working capital, in addition to land, capital improvements and machinery needs of assisted small business concerns.

Source of development company funds.—Guaranteed debentures issued by development companies under section 503 of the Small Business Investment Act of 1958 may be used to provide funding for up to one-half of project cost in assisting small concerns.

H.R. 6086 clarifies Congressional intent that development companies should be able to assist small business using funds from SBA guaranteed debentures mixed with funds derived from Industrial Revenue Bonds.

Limitation on use of SBA loans.—The bill, H.R. 6086, amends the SBA's 7(a) loan authority to prohibit financial assistance benefiting any applicant which performs abortions, engages in abortion research, promotes or recommends abortion or provides abortion training.

In all events, promotion or training for abortion is not to be financed. However, if an applicant performs abortions, or promotes or recommends abortion, only in cases where the life of the mother would be endangered if the fetus were carried to term, such activities would not preclude SBA 7(a) assistance.

LOAN RESTRICITONS AND PRIORITIES

With the exception of direct loans made to handicapped individuals or organizations under section 7(a)(10), the bill would impose a series or requirements on all direct loans made under section 7(a) of the Small Business Act.

Certain of these requirements pertain to the analysis of credit decisions and required that the direct loan applicant demonstrate a potential, after the loan is made, for sustained business growth. This analysis must include (1) a review of the firm's present and potential markets which is needed to verify its projected cash flow; (2) a review of the geographic location of the firm; and (3) a review of any type of unduly restrictive agreement which would impede the profitable operations of the firm. It is not the intent of your Committee, however, that SBA apply these new statutory standards in a way which would thwart the purpose of the direct loan program by requiring credit standards equal to or exceeding those used by conventional commercial lenders on SBA guarantee loans.

Another restriction which would be applied to the covered 7(a) direct loan programs is a condition that the applicant give reasonable assurance it will create employment opportunities within two years after all loan proceeds are disbursed.

It is your Committee's belief that the expenditure of direct loan funds should result in job opportunities and, further, that at the present time a ratio of one job for each $15,000 of direct loan funds should be used as a guideline by SBA in typical cases.

If, after the specified two-year period, the number of employment opportunities orginally represented to exist by the borrower do not materialize, it is not, of course, the intent of your Committee that the loan be accelerated. However, if the failure to create jobs is accompanied by a knowing and willful misrepresentation when the loan was approved, the SBA would be at liberty to take such remedial measures as may be legally appropriate under the circumstances.

The ls requirement attendant to the covered direct loans is intended to establish a statutory linkage between such loans and the SBA's management and technical assistance programs.

Specifically, the bill would require that between loan approval and loan disbursement, the SBA develop, in concert with the applicant, a plan to address the firm's management and marketing weaknesses. The management and technical assistance resources of SBA must be made available on a priority basis to implement these plans. (This new requirement is not intended to supersede the eligibility criteria specified in section 7(j) for the usage of that program's resources.)

The plans should be in a format which is easily understood by the applicant. With respect to the actual preparation of such plans, the use of computers to collect, assimilate, and correlate raw data submitted by the applicant should be carefully explored by SBA. The agency should note the deep concern of your Committee pertaining to this issue and submit to the appropriate Committees of both the House and the Senate its proposals for use of this proposed methodology prior to the adoption of any policy, procedure or regulation concerning automated methods.

In order to place direct loan resources in those areas most in need of economic stimulus, the bill contains a formula for the allocation of direct loan funds.

At present such funds are allocated to each of the SBA's ten (10) Regional offices on the basis of historical usage. Regions, in turn, allocate to the district offices within their jurisdiction on the same empirical usage basis. However, the new formula proposed by this bill would allocate direct loan funds on the basis of unemployment. That is, each Region would receive an allocation based upon the number of unemployed residing within the Region as a percent of the total number of unemployed nationwide. Each Region would then allocate to their districts based upon the number of unemployed within the district as a percent of the total number unemployed within the Region. During the last fifteen (15) calendar days of each fiscal quarter, SBA would have the discretion to reallocate direct loan funds among the Regions or districts if it is unreasonable to expect that any such office will be able to commit substantially all of its funds before the expiration of the quarter.

By adopting this provision it is the intent of your Committee to channel job-creating, direct loan funds to those areas most in need. Since the new allocation formula is based on quarterly statistics, it is believed that sufficient flexibility exists to respond rapidly to changing economic conditions. Further the passage of this provision will automatically insure that each state will receive its fair proportion of a scarce resource and remove from SBA the unfettered administrative discretion to distribute appropriated funds as it may, from time to time, see fit.

After the direct loan funds are allocated on the basis of need, the bill would establish an order of priority for the expenditure of such funds by the various SBA district offices.

The first priority is for small firms located in or near labor surplus areas (i.e., areas of persistent high unemployment) which will use the proceeds for construction, renovation, or the purchase of land, building, machinery or equipment. Your Committee has established this category as the highest priority since loan funds are directed to, typically, the most distressed areas in the local community and toward the creation of facilities necessary for new jobs. Additionally such loans will be secured by fixed assets, thereby improving the currently very high default rates.

The second priority is afforded firms located in or near a labor surplus area regardless of the use of loan proceeds. This priority would achieve the purpose of targeting to the unemployed but, because of more flexible conditions on the use of proceeds, may likely result in a weaker credit than loans made under the first priority.

By the word "near", the Committee intends that a business which employs or will employ more than half its work force from a labor surplus area shall be considered to be located in a labor surplus area.

The last priority is intended to encompass all other qualified small businesses which do not meet the definitional constraints of the first two priorities.

In order to leverage non Federal resources for the benefit of the small business community, the bill would require that each direct loan be accompanied by an injection of outside funds.

The amount of the outside injection is dependent upon the size of the requested direct loan. If the loan is under $100,000 in amount, at least an additional 10 percent of outside funds are required; if the loan is between $100,000 and $200,000, at least 20 percent; and if over $200,000, at least 30 percent. However, in order to encourage the participation of State and local governments or other development entities providing less than market rate loans in the larger dollar size loans, the bill provides, for loans over $100,000, that if the outside contribution is from a State or local government or other development entity providing less than market rate loans, the amount of the outside injection need only be one-half of what would otherwise be required. The Committee intends that the SBA and sources of outside fund injection should share in the assets used for securing the matching loan.

Finally, in order to complete the restructuring of the direct loan program, the bill would require SBA to delegate to its district offices the authority to approve direct loans up to the maximum $350,000 allowed by statute.

At present the SBA has administratively determined that district offices cannot approve direct loans which exceed $150,000. Loans exceeding that amount are approved by higher authority within the agency. Not only is this practice time-consuming and wasteful, but it also provides a built-in incentive for field offices to underfinance a small business rather than face the bureaucratic delays concomitant with Regional or Central office review. Since previous sections of this bill specify the allocation of direct funds for each field office and since field offices now possess the authority and competence to approve guarantee loans of $500,000 or more, SBA's present administrative limitation finds no basis in logic and ought to be statutorily repealed.

LABOR SURPLUS AREA PROCUREMENT

The bill, H.R. 6086 makes technical amendments to section 15 of the Small Business Act. These amendments would: (1) make it clear that the head of a Federal procuring agency or his designee makes the determination whether a particular requirement should be set-aside for a LSA firm (2) clarify the present order of priorities for the award of LSA or small business set-asides, whether partial or total; and (3) firmly establish that any firm, regardless of size, may compete for a LSA contract after all of the small business priorities have been exhausted.

By reenacting subsections (d), (e), and (f) of section 15, Congress would provide for greater uniformity in the Federal acquisition system by removing present barriers prohibiting the Department of Defense from participating in the LSA program. Approval of this section will clearly establish a Congressional mandate that all Government agencies participate in the LSA procurement program. Further, it is the intent of the Committee that firms that employ or will employ over half its workforce from a labor surplus area shall be considered to be located in a labor surplus area.

MATTERS REQUIRED TO BE DISCUSSED UNDER HOUSE RULES

In compliance with clause 2(1)(2) of rule XI of the House of Representatives, the following statement is made relative to the vote on the motion to report H.R. 6086.

A majority of the committee voted in person and was actually present and the motion was approved by a recorded vote of 38 ayes and 0 nays.

In compliance with clause 2(1)(3) of rule XI of the Rules of the House of Representatives, the following statements are made:

With regard to subdivision (A), relating to oversight findings, the committee finds, in keeping with clause 2(b)(1) of rule X, that this legislation is in full compliance with the provision of this rule of the House which states:

"In addition, each such committee shall review and study any conditions or circumstances which may indicate the necessity or desirability of enacting new or additional legislation within the jurisdiction of that committee. * * *"

With regard to subdivision (B), relating to the statement required by section 308(a) of the Congressional Budget Act of 1974, the following statement is made relative to the legislation:

"Section 3(a)(2) of the Congressional Budget Act defines the term 'tax expenditures' as those revenue losses attributable to provisions of the Federal tax laws which allow a special exclusion, exemption, or deduction, from gross income or which provide a special credit, a preferential rate of tax, or a deferral of tax liability."

None of the provisions of H.R. 6086 deals with taxation and thus, in your committee's opinion, this bill does not provide new or increased tax expenditures.

Section 3(a)(2) of the Congressional Budget Act defines the term "budget authority" as authority provided by law to enter into obligations which will result in immediate or future outlays involving Government funds.

Under this definition, it is the final action of Congress that authorizes an agency to enter into obligations which constitute new budget authority. In those cases which entail (1) an authorization for an agency to undertake a program; (2) an authorization for appropriation of funds to permit that agency to enter into obligations; and (3) an actual appropriation of such funds, it would be only the final action of Congress in appropriating funds which constitutes the budget authority.

None of the provisions of H.R. 6086 appropriates funds and thus, in your committee's opinion, the bill does not provide new budget authority. Accordingly, no comparison of budget authority, outlays or tax expenditures or 5-year projections have been made.

With regard to subdivision (C) and (D), the cost estimate of the Director of the Congressional Budget Office relative to H.R. 6086 is as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., May 14, 1982.

Hon. PARREN J. MITCHELL,
Chairman, Committee on Small Business,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 6086, a bill to amend the Small Business Act and the Small Business Investment Act of 1958, as ordered reported by the House Committee on Small Business, May 11, 1982.

H.R. 6086 would make a number of changes, effective October 1, 1982, to the programs administered by the Small Business Administration. None of these changes is expected to have a significant budget impact. The bill would increase the loan program ceilings for economic opportunity, minority capital ownership development, and investment company loans by a total of $203 million. However, no change is made to the 1983 and 1984 authorization levels in current law for the business loan and investment fund, which administers these activities. As a result, it is likely that this change will simply provide more flexibility in setting program levels.

H.R. 6086 would also require that SBA provide loans at the program levels specified in the appropriation bill unless a lack of qualified applicants exists. It would prohibit the Administration from denying guarantees for the pollution control program or the private development company program solely because tax exempt revenue bonds are involved in financing these activities. Since January, 1982, when the Administrative established this policy, SBA has approved few guarantees in these programs because many applicants also use this type of financing.

The bill would establish new priorities for the distribution of SBA direct loans. Loans would be allocated to districts based on their levels of unemployment. SBA would be required to keep a list of inquiries and applicants for loans, and to report to the Congress before changing any program levels. Section 14 of the bill would extend the length of time for notification of federal procurements published in the Commerce Business Daily, and also make a number of technical changes in current law, including those affecting the disaster loan program and the labor set-aside procurement program.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

JAMES BLUM,
(For Alice M. Rivlin, *Director*).

No oversight findings or recommendations have been made by the Committee on Government Operations with respect to the subject mater contained in H.R. 6086.

In compliance with clause 2(l)(4) the Committee concludes that the provisions of this legislation in and of themselves will have no inflationary impact on prices and costs in the operation of the national economy.

In compliance with clause 7, rule XIII of the House of Representatives, the Committee makes the following statement:

There are no costs attributable to this bill for the current fiscal year. For fiscal years 1983–87 cost estimates are as follows: the bill does not authorize the appropriation of any monies; its major provisions are changes in three SBA program levels, modification of SBA's direct loan program, and new requirements on notification of pending Federal procurement actions. It does, however, require some administrative expenses for program operation. It is fully expected that these administrative costs will be minimal and will be paid from the agencies' overall budgets.

No cost estimate was submitted by any Government agency on H.R. 6086 to your committee.

In your committee's opinion, the above statements fully comply with the Rules of the House of Representatives.

SECTION-BY-SECTION ANALYSIS

Section 1(a) of the bill amends paragraph (2) of subsection (n) of section 20 of the Small Business Act to raise the EOL guarantee authorization to $167 million for fiscal year 1983.

Section 1(b) of the bill amends paragraph (3) of subsection (n) of Section 20 of the Small Business Act to raise the MESBIC Authorization level to $41 million for fiscal year 1983 and the SBIC guarantee authroization to $250 million for fiscal year 1983.

Section 1(c) of the bill amends paragraph (2) of subsection (q) of section 20 of the Small Business Act to raise the EOL guarantee authorization to $167 million for fiscal year 1984.

Section 1(d) of the bill amends paragraph (3) of subsection (q) of Section 20 of the Small Business Act to raise the MESBIC Authorization level to $41 million for fiscal year 1984 and the SBIC guarantee authorization to $250 million for fiscal year 1984.

Section 2 of the bill amends section 5 of the Small Business Act by adding a new subsection (f) which requires SBA to approve assistance in the amounts made available by law and agreed to by the President unless there is a lack of qualified applicants for assistance.

Section 3 (a) and (b) of the bill amends paragraph 1 of subsection (b) of section 404 of the Small Business Investment Act of 1958 to clarify that SBA must not refuse to issue its guarantee in connection with tax-exempt revenue bonds.

Section 3(c) of the bill provides that the amendments made by section 3 (a) and (b) apply to applications pending on, or made on or subsequent to, January 1, 1982.

Section 4 of the bill amends section 411 of the Small Business Investment Act of 1958 by adding a new paragraph (h) which expressly prohibits SBA (or SBA upon instructions from OMB) from limiting the maximum amount of a bond below the statutory limit of $1 million and from utilizing a percentage increase limitation based on the previously successfully completed contract except on a case-by-case basis.

Section 5 of the bill amends paragraph (4) of subsection (a) of section 7 of the Small Business Act by adding a proviso prohibiting

SBA from changing its present guaranteed interest rate regulations (13 CFR 120) before June 30, 1982.

Section 6 of the bill amends section 10 of the Small Business Act by adding a new subsection (h) which would require SBA to keep records of applications or inquiries for its assistance programs for at least one year from date of application or inquiry.

Section 7 of the bill amends section 5 of the Small Business Act by adding a new subsection (g) which would codify the current generally-followed practice of SBA notifying the Small Business Committees before reprograming any program levels and to require that SBA notify the Committees before implementing any reorganization, internal or otherwise.

Section 8 of the bill amends section 2 of the Small Business Act to provide current, corrected cross reference to the EOL program 7(a)(1) resulting from P.L. 97-35.

Section 9(a)-(c) amends section 7 of the Small Business Act to provide current, corrected cross references to the consolidated 7(a) loan program resulting from P.L. 97-35.

Section 9(d) amends subparagraph (D) of paragraph (4) of subsection (c) of section 7 of the Small Business Act by substituting language to clarify that that paragraph's and subsection's references are to subsection (b) of section 7. This corrects action taken in P.L. 97-35.

Section 10 of the bill amends subsection (a) of section 7 of the Small Business Act by adding a new paragraph (16) limiting the use of SBA's direct loan programs with the exception of Handicapped Assistance Loans.

Paragraph 16(A) provides that no direct loan may be made unless:

(i) the applicant has a capacity for business growth as evidenced by: identified markets for its products or services; location in a geographic area suitable to its business needs; access to a profitable share of its identified market without harming another small business in the same geographic area producing the same goods or services; and lack or restrictive agreements which could adversely affect its profit potential.

(ii) the applicant will create jobs within two (2) years after the loan is disbursed; and

(iii) SBA determines the management or marketing weaknesses of the applicant and devises a detailed management plan to address such weaknesses.

Paragraph 16(B) provides a new allocation formula for SBA direct loans:

The new formula is based upon the number of unemployed residing in the region as a percent of the total unemployed nationwide. The 10 SBA regions, in turn, allocate to their districts based on the number of unemployed within the district as a percent of unemployed regionwide. Direct loan funds would go where the unemployed are.

Paragraph 16(C) provides that each SBA district shall use its direct loan allocations in the following order of priority: (1) Labor surplus area firms which will use the loan proceeds to acquire land or other fixed assets; (2) labor surplus area firms; and (3) other

small businesses regardless of where located or how the proceeds are to be used.

Section 11 of the bill amends paragraph (3) of subsection (a) of section 7 of the Small Business Act to require matching funds from non-Federal sources for section 7(a) direct loans.

Paragraph (3)(A) provides percentage requirements for such matching funds:

1. Under $100,000—10 percent or more;
2. Between $100,000 and $200,000—20 percent or more; and
3. Over $200,000—30 percent or more.

Paragraph (3)(B) provides for a reduction of the matching provisions in A(2) and A(3) by 10 and 15 percent respectively if the non-Federal matching funds are from state or local governments, including such government's tax exempt obligations.

Paragraph (3)(C) overrides the present SBA administrative practice by providing for district office approval of direct loans up to $350,000.

Paragraph (3)(D) allows SBA to transfer categories of direct loans in order to meet changes in demand and usage.

Paragraph (3)(E) defines "nonfederal sources" (of matching funds) for purposes of the new direct loan match provisions.

Section 12 of the bill amends subsection (a) of section 7 of the Small Business Act by adding a new subsection 17. Paragraph (A) of subsection 17 prohibits SBA financial assistance to benefit any applicant which performs abortions, which engages in research which relates to methods of, or performance of, abortions, which promotes or recommends abortion, or which trains any individual to perform abortions.

Paragraph (B) of subsection 17 provides an exception to subparagraph (A) if all of the abortions performed, promoted, or recommended in such activity are in cases where the life of the mother would be endangered if "the fetus were carried to term".

Section 13 of the bill amends section 15 of the Small Business Act by substituting for the present subsections (d), (e), and (f) new subsections (d), (e) and (f). These new subsections provide the contract award priorities for procurement under this section (15) which provides authority for small business procurement set asides.

The new subsection (d) strikes the word "secretary" in subsection (d) and substitutes in lieu thereof the phrase "head of the procuring federal agency".

The new subsection (e) provides greater definition of the order of set-aside priorities for award of contracts or subcontracts without changing such priorities.

The priorities established are:

Subsection (e)(1) concerns which are small business concerns and which are located in labor surplus areas, on the basis of a total small business-labor suprplus area set aside;

Subsection (e)(2) concerns which are small business concerns, on the basis of a total small business set aside;

Subsection (e)(3) concerns which are small business concerns and which are located in labor surplus areas, on the basis of a parital small business-labor surplus area set aside; and

Subsection (e)(4) concerns which are small business concerns, on the basis of a partial small business set aside.

The new subsection (f) deletes entirely the ambiguous language in the former subsection (f) to clarify that any business regardless of size may compete for a LSA contract after all small business priorities have been exhausted if that concern will perform a substantial portion of its contracts or subcontracts within labor surplus areas or areas of concentrated unemployment of under employment.

Section 14 of the bill amends subsection (e) of section 8 of the Small Business Act by the addition of a new sentence which establishes minimum notice requirements for Federal procurements advertised in the Commerce Business Daily: fifteen days between publication of the notice and issuance of the request for bids or proposals and an additional thirty days after such issuance and awarding of the contract.

Section 15 of the bill amends subsection (h) of section 3 of the Small Business Act to make technical corrections in changes made by P.L. 97-35: Subsection (a) replaces, the words "availability of credit" with "availability of sufficient credit"; and subsection (b) replaces the word "conditions" with "conditions and at reasonable rates,".

Section 16 of the bill amends subsection (a) of section 3 of the Small Business Act to expressly mandate that any SBA size standard changes be in accordance with the Administrative Procedure Act, Chapter 5 of title 5 U.S.C.

Section 17 of the bill amends subsection (a) of section 302 of the Small Business Investment Act of 1958 to provide that MESBICs which obtained from a State Government or Federal Government (other than SBA) funds prior to July 29, 1980, may use such funds for purpose of obtaining leveraged funds from SBA.

Section 18 of the bill amends section 502 of the Small Business Investment Act of 1958 by expanding the eligible use of funding provision therein by the addition of the words "working capital".

Section 19 of the bill amends paragraph (5) of subsection (b) of section 503 of the Small Business Investment Act of 1958 to prohibit SBA from considering, as a condition of providing its guarantee to develop company debentures for a particular project, the source of that project's other funding.

Section 20 provides that (1) the amendments made by H.R. 6086 are to be effective October 1, 1982, and (2) the technical amendments to section 7(c)(4)(D) and section 3(h) of the Small Business Act, found in sections 9(d) and 14 of H.R. 6086, do not apply to any disaster on or before July 2, 1980.

Changes in Existing Law Made by the Bill, As Reported

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed in shown in roman):

SMALL BUSINESS ACT

SEC. 2. (a) * * *

* * * * * * *

(c)(1) The assistance programs authorized by sections 7 [(i)] *(a)(11)* and 7(j) of this Act are to be utilized to assist in the establishment, preservation, and strengthening of small business concerns and improve the managerial skills employed in such enterprises, with special attention to small business concerns (1) located in urban or rural areas with high proportions of unemployed or low-income individuals; or (2) owned by low-income individuals; and to mobilize for these objectives private as well as public managerial skills and resources.

* * * * * * *

SEC. 3. (a) For the purposes of this Act, a small-business concern, including but not limited to enterprises that are engaged in the business of production of food and fiber, ranching and raising of livestock, aquaculture, and all other farming and agricultural related industries, shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation. In addition to the foregoing criteria the Administrator, in making a detailed definition, may use these criteria, among others: Number of employees and dollar volume of business:

[*Provided,* That the Administration shall not promulgate, amend, or rescind any rule regulation with respect to size standards prior to March 31, 1981.] *Provided, That notwithstanding the waiver provisions of any other law, the Administration shall not promulgate, amend or rescind any rule or regulation with respect to size standards except in accordance with the procedures of chapter 5 of title 5, United States Code.* Where the number of employees is used as one of the criteria in making such definition for any of the purposes of this Act, the maximum number of employees which a small-business concern may have under the definition shall vary from industry to industry to the extent necessary to reflect differing characteristics of such industries and to take proper account of other relevant factors.

(h) For purposes of this Act, the term "credit elsewhere" means the availability of *sufficient* credit from non-Federal sources on reasonable terms and conditions *and at reasonable rates,* taking into consideration the prevailing rates and terms in the community in or near where the concern transacts business, or the homeowner resides, for similar purposes and periods of time.

* * * * * * *

SEC. 5. (a) * * *

* * * * * * *

(f) Notwithstanding any other provision of law, the Administration shall enter into commitments for direct loans and to guarantee loans, debentures, payment of rentals or other amounts due under qualified contracts and other types of financial assistance and to enter commitments to guarantee sureties against loss pursuant to programs under this Act and the Small Business Investment Act of 1958 in the full amounts provided by law, including reprograming

requests approved by the Appropriations Committees of the United States Senate and the House of Representatives of the United States, subject only to (1) the availability of qualified applications for such direct loans and guarantees and (2) limitations and amounts contained in authorization and appropriation acts. Nothing in this subsection authorizes the Administration to reduce or limit its authority to enter commitments for direct loans or for such guarantees to qualified applicants.

(g) The Administration shall notify the Senate Small Business Committee and the Small Business Committee of the U.S. House of Representatives before reprograming any program amounts authorized in appropriations Acts or reports explanatory thereof and shall notify the Senate Small Business Committee and the Small Business Committee of the U.S. House of Representatives before implementing any reorganization of such agency.

* * * * * * *

SEC. 7. (a) The Administration is empowered to the extent and in such amounts as provided in advance in appropriation Acts to make loans for plant acquisition, construction, conversion, or expansion, including the acquisition of land, material, supplies, equipment, and working capital, and to make loans to any qualified small business concern, including those owned by qualified Indian tribes, for purposes of this Act. Such financings may be made either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis. These powers shall be subject, however, to the following restrictions, limitations, and provisions:

(1) No financial assistance shall be extended pursuant to this subsection if the applicant can obtain credit elsewhere. No immediate participation may be purchased unless it is shown that a deferred participation is not available; and no direct financing may be made unless it is shown that a participation is not available.

* * * * * * *

[(3) No loan under this subsection shall be made if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established by this Act would exceed $500,000: *Provided,* That no such loan made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate basis shall exceed $350,000.]

(3)(A) No loan under this subsection shall be made if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established by section 4(c)(1) of this Act would exceed $500,000: Provided, *That the Administration's share of any loan made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate basis shall not exceed $350,000,* Provided further, *That any loan made directly pursuant to this subsection shall be accompanied by an injection of additional*

funds derived from nonfederal sources in the following amounts:

(i) if the loan is under $100,000 in amount, at least 10 per centum;

(ii) if the loan is between $100,000 and $200,000 in amount, at least 20 per centum; and

(iii) if the loan is over $200,000 in amount, at least 30 per centum.

(B) The percentages specified in subparagraphs (A) (ii) and (iii) shall be reduced to 10 per centum and 15 per centum, respectively, if the nonfederal source funds are derived from a State or local government, including tax exempt obligations of such governments.

(C) The Administration shall delegate to each district office the authority to approve direct loans in the amounts specified in subparagraphs (A) (i), (ii), and (iii) under the conditions specified in this Act without seeking higher approval within the Administration.

(D) The Administration may transfer no more than 15 per centum of each of the total levels for direct loan programs as authorized in section 20 of this Act: Provided, however, *That no loan program level authorized in such section may be increased more than 25 per centum by any such transfers:* Provided further, *That the Administrator is not authorized to transfer direct loan levels to deferred participation (guaranteed) loan levels and that any transfers shall be effective only to the extent approved in advance by the Appropriations Committees of the United States Senate and of the House of Representatives of the United States.*

(E) For purposes of this paragraph the term "non-Federal sources" shall include, but not be limited to, State and local government funds (including the proceeds from tax-exempt obligations of such governments), and funds derived from private financial institutions or private equity sources. In no event shall such term include funds derived directly from any grant or loan made, guaranteed, or insured by the Federal Government.

(4) The rate of interest on financings made on a deferred basis shall be legal and reasonable but shall not exceed a rate prescribed by the Administration, and the rate of interest for the Administration's share of any direct or immediate participation loan shall not exceed the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans and adjusted to the nearest one-eighth of 1 per centum, and an additional amount as determined by the Administration, but not to exceed 1 per centum per annum: *Provided,* That for those loans to assist any public or private organization for the handicapped or to assist any handicapped individuals as provided in paragraph (10) of this subsection, the interest rate shall be 3 per centum per annum: *Provided further, That prior to June 30, 1982, the Administration shall not promulgate, amend, or rescind any rule or regulation with respect to a formula involving prime interest rates as*

a criteria to determine the maximum interest rate a lender may charge on a deferred participation (guaranteed) loan.

* * * * * * *

(16)(A) No direct loan may be made pursuant to this subsection unless the Administration determines—

(i) that the applicant for such loan (whether a startup or existing small business concern) demonstrates a potential for sustained business growth as evidenced by (I) capacity to create, expand, or satisfy domestic or international markets for the products or services produced or rendered by such applicant, (II) location in a geographic area suitable for its business operations and access to markets, and (III) lack of unduly restrictive agreements which, if exercised, could substantially impede the profitable operations of the applicant;

(ii) that the applicant has given reasonable assurance that it will create employment opportunities within a two-year period after all loan proceeds are disbursed; and

(iii) those managerial or marketing weaknesses which exist with respect to such applicant and devises, in concert with the applicant, a management plan, prior to the disbursement of any proceeds of such loan, to address such weaknesses. Such plan, if needed, shall be in writing, provide for identifiable business goals, plans of action and timetables for accomplishment and shall be incorporated by reference into the loan authorization agreement. The Administration shall provide assistance for the implementation of such plans on a priority basis through such management and technical assistance activities as are authorized by this Act.

(B) Direct loan funds under subsection (a) shall be allocated to the Administration's regional offices at least quarterly each fiscal year. The amount of such allocation shall be based solely upon the average total number of unemployed workers residing within each regional area as a percent of the average total unemployed work force nationwide for the immediately preceding fiscal quarter, or for the most recent fiscal quarter for which such statistics are available. Each regional office shall allocate such funds to each district office within its jurisdiction at least quarterly based solely upon the average total number of unemployed workers residing within the district as a percent of the average total unemployed work force region wide for the immediately preceding fiscal quarter, or for the most recent fiscal quarter for which such statistics are available. During the last fifteen calendar days of each fiscal year quarter the Administration may reallocate direct loan funds among its regions or districts if it is unreasonable to expect that such region or district will commit substantially all of its allocation before the expiration of such quarter.

(C) Direct loans authorized by this subsection shall be extended on a priority basis within each of the Administration's designated district areas to those qualified applicants in order of the following priority—

(i) those applicants which (I) satisfy the requirements of subparagraph (A), (II) are located in or near a labor surplus area (as defined pursuant to Defense Manpower Policy 4B (32A CFR Chapter 1) or any successor policy), (III) agree to perform or render a substantial proportion of their production or services within or near such areas, and (IV) will utilize the loan proceeds solely for construction, renovation or the purchase of land, buildings, machinery or equipment;

(ii) those applicants which satisfy the requirements of subparagraph (A) and subparagraph (C)(i)(I), (II), and (III); and

(iii) those applicants which satisfy the requirements of subparagraph (A).

(D) Neither this paragraph nor the second proviso of paragraph (3)(A) of subsection (a) shall apply to direct loans made pursuant to paragraph (10) of this subsection.

(17)(A) In the case of any applicant—

(i) which performs abortion,

(ii) which engages in research which relates, in whole or in part, to methods of, or the performance of, abortion,

(iii) which promotes or recommends abortion, or

(iv) which trains any individual to perform abortion, no financial assistance shall be available under this subsection which benefits such applicant with respect to any of the activities described in clause (i), (ii), (iii), or (iv).

(B) Subparagraph (A) shall not apply to any activity described in clause (i) or (iii) of subparagraph (A) if all of the abortions performed, promoted, and recommended in such activity are in cases where the life of the mother would be endangered if the fetus were carried to term.

* * * * * * *

(c)(1) * * *

* * * * * * *

(4) Notwithstanding the provisions of any other law, the interest rate on the Federal share of any loan made under subsection (b) shall be—

(A) in the case of a homeowner unable to secure credit elsewhere, the rate prescribed by the Administration but not more than one-half the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator, and adjusted to the nearest one-eighth of 1 percentum but not to exceed 8 per centum per annum;

(B) in the case of a homeowner able to secure credit elsewhere, the rate prescribed by the Administration but not more than the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average ma-

turities of such loans plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator, and adjusted to the nearest one-eighth of 1 per centum.

(C) in the case of a business concern unable to obtain credit elsewhere, not to exceed 8 per centum per annum;

(D) in the case of a business concern able to obtain credit elsewhere, the rate prescribed by the Administration but not in excess of the rate prevailing in private market for similar loans and not more than the rate prescribed by the Administration as the maximum interest rate for deferred participation (guaranteed) loans under section 7(a) of this Act. Loans under this subparagraph shall be limited to a maximum term of three years.

[Such loans, subject to the reductions required by subparagraphs (A) and (B) of paragraph (1), shall be in amounts equal to 100 percent of loss if the applicant is a homeowner and 85 percent of loss if the applicant is a business or otherwise. The interest rates for loans made under paragraphs (1) and (2), as determined pursuant to this paragraph (4), shall be the rate of interest which is in effect on the date the disaster commenced: *Provided,* That no loan under paragraphs (1) and (2) shall be made, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis, if the total amount outstanding and committed to the borrower under this subsection would exceed $500,000 for each disaster unless an applicant constitutes a major source of employment in an area suffering a disaster, in which case the Administration, in its discretion, may waive the $500,000 limitation.]

Such loans, subject to the reductions required by subparagraphs (A) and (B) of paragraph 7(b)(1), shall be in amounts equal to 100 percent of loss if the applicant is a homeowner and 85 percent of loss if the applicant is a business or otherwise. The interest rates for loans made under paragraphs 7(b)(1) and (2), as determined pursuant to this paragraph (4), shall be the rate of interest which is in effect on the date the disaster commenced: Provided, *That no loan under paragraph 7(b)(1) and (2) shall be made, either directly or in cooperation with banks or other lending institutions through agreements, to participate on an immediate or deferred (guaranteed) basis, if the total amount outstanding and committed to the borrower under subsection 7(b) would exceed $500,000 for each disaster unless an applicant constitutes a major source of employment in an area suffering a disaster, in which case the Administration, in its discretion, may waive the $500,000 limitation.*

[(e) The Administration also is empowered to make loans (either directly or in cooperation with banks or other lenders through agreements to participate on an immediate or deferred basis) to assist any firm to adjust to changed economic conditions resulting from increased competition for imported articles, but only if (1) an adjustment proposal of such firm has been certified by the Secretary of Commerce pursuant to the Trade Expansion Act of 1962, (2) the Secretary has referred such proposal to the Administration under the Act and the loan would provide part or all of the financial assistance necessary to carry out such proposal, and (3) the

Secretary's certification is in force at the time the Administration makes the loan. With respect to loans made under this subsection the Administration shall apply the provisions of section 314, 315, 316, 318, 319, and 320 of the Trade Expansion Act of 1962 as though such loans had been made under section 314 of that Act.]

* * * * * * *

[(h)(1) The Administration also is empowered, where other financial assistance is not available on reasonable terms, to make such loans (either directly or in cooperation with Banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate—

[(A) to assist any public or private organization—

[(i) which is organized under the laws of the United States or of any State, operated in the interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual;

[(ii) which complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and

[(iii) which, in the production of commodities and in the provision of services during any fiscal year in which it receives financial assistance under this subsection, employs handicapped individuals for not less than 75 per centum of the man-hours required for the production or provisions of the commodities or services; or

[(B) to assist any handicapped individual in establishing, acquiring, or operating a small business concern.

[(2) The Administration's share of any loan made under this subsection shall not exceed $350,000, nor may any such loan be made if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established by section 4(c)(1)(B) of this Act would exceed $350,000. In agreements to participate in loans on a deferred basis under this subsection, the Administration's participation may total 100 per centum of the balance of the loan at the time of disbursement. The Administration's share of any loan made under this subsection shall bear interest at the rate of 3 per centum per annum. The maximum term of any such loan, including extensions and renewals thereof, may not exceed fifteen years. All loans made under this subsection shall be of such sound value or so secured as reasonably to assure repayment: *Provided, however,* That any reasonable doubt shall be resolved in favor of the applicant.

[(3) For purposes of this subsection, the term "handicapped individual" means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable.

[(i)(1) The Administration also is empowered to make, participate (on an immediate basis) in, or guarantee loans, repayable in

not more than fifteen years, to any small business concern, or to any qualified person seeking to establish such a concern, when it determines that such loans will further the policies established in section 2(b) of this Act, with particular emphasis on the preservation or establishment of small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals, or owned by low-income individuals: *Provided, however,* That no such loans shall be made, participated in, or guaranteed if the total of such Federal assistance to a single borrower outstanding at any one time would exceed $100,000. The Administration may defer payments on the principal of such loans for a grace period and use such other methods as it deems necessary and appropriate to assure the successful establishment and operation of such concern. The Administration may, in its discretion, as a condition of such financial assistance, require that the borrower take steps to improve his management skills by participating in a management training program approved by the Administration: *Provided, however,* That any management training program so approved must be of sufficient scope and duration to provide reasonable opportunity for the individuals served to develop entrepreneurial and managerial self-sufficiency.

[(2) The Administration shall encourage, as far as possible, the participation of the private business community in the program of assistance to such concerns, and shall seek to stimulate new private lending activities to such concerns through the use of the loan guarantees, participations in loans, and pooling arrangements authorized by this subsection.

[(3) To insure an equitable distribution between urban and rural areas for loans between $3,500 and $100,000 made under this subsection, the Administration is authorized to use the agencies and agreements and delegations developed under title III of the Economic Opportunity Act of 1964, as amended, as it shall determine necessary.

[(4) The Administration shall provide for the continuing evaluation of programs under this subsection, including full information on the location, income characteristics, and types of businesses and individuals assisted, and on new private lending activity stimulated, and the results of such evaluation together with recommendations shall be included in the report required by section 10(a) of this Act.

[(5) Loans made pursuant to this subsection (including immediate participation in and guarantees of such loans) shall have such terms and conditions as the Administration shall determine, subject to the following limitations—

[(A) there is reasonable assurance of repayment of the loan;

[(B) the financial assistance is not otherwise available on reasonable terms from private sources or other Federal, State, or local programs;

[(C) the amount of the loan, together with other funds available, is adequate to assure completion of the project or achievement of the purposes for which the loan is made;

[(D) the loan bears interest at a rate not less than (i) a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding Treasury

obligations of comparable maturity, plus (ii) such additional charge, if any, toward covering other costs of the program as the Administration may determine to be consistent with its purposes: *Provided, however,* That the rate of interest charged on loans made in redevelopment areas designated under the Public Works and Economic Development Act of 1965 (42 U.S.C. 3108 et seq.) shall not exceed the rate currently applicable to new loans made under section 201 of that Act (42 U.S.C. 3142); and

[(E) fees not in excess of amounts necessary to cover administrative expenses and probable losses may be required on loan guarantees.

[(6) The Administration shall take such steps as may be necessary to insure that, in any fiscal year, at least 50 per centum of the amounts loaned or guaranteed pursuant to this subsection are allotted to small business concerns located in urban areas identified by the Administration as having high concentrations of unemployed or low-income individuals or to small business concerns owned by low-income individuals. The Administration shall define the meaning of low income as it applies to owners of small business concerns eligible to be assisted under this subsection.

[(7) No financial assistance shall be extended pursuant to this subsection where the Administration determines that the assistance will be used in relocating establishments from one area to another if such relocation would result in an increase in unemployment in the area of original location.]

(j)(1) The Administration shall provide financial assistance to public or private organizations to pay all or part of the cost of projects designed to provide technical or management assistance to individuals or enterprises eligible for assistance under sections 7[(i)] *(a)(11),* 7(j)(10), and 8(a) of this Act, with special attention to small businesses located in areas of high concentration of unemployed or low-income individuals, to small businesses eligible to receive contracts pursuant to section 8(a) of this Act.

(2) Financial assistance under this subsection may be provided for projects, including, but not limited to—

(A) planning and research, including feasibility studies and market research;

(B) the identification and development of new business opportunities;

(C) the furnishing of centralized services with regard to public services and Federal Government programs including programs authorized under section 7[(i)] *(a)(11),* (7)(j)(10), and 8(a) of this Act;

(D) the establishment and strengthening of business service agencies, including trade associations and cooperatives; and

(E) the furnishing of business counseling, management training, and legal and other related services, with special emphasis on the development of management training programs using the resources of the business community, including the development of management training opportunities in existing business, and with emphasis in all cases upon providing management training of sufficient scope and duration to develop entre-

preneurial and managerial self-sufficiency on the part of the individuals served.

(3) The Administration shall encourage the placement of subcontracts by businesses with small business concerns located in areas of high concentration of unemployed or low-income individuals, with small businesses owned by low-income individuals, and with small businesses eligible to receive contracts pursuant to section 8(a) of this Act. The Administration may provide incentives and assistance to such businesses that will aid in the training and upgrading of potential subcontractors or other small business concerns eligible for assistance under sections 7[(i)] *(a)(11),* 7(j), and 8(a) of this Act.

(A) An advisory committee composed of five high-level officers from five United States businesses and five representatives of minority small businesses shall be created to facilitate the achievement of the purposes of this paragraph. The members of the advisory committee shall be appointed by the President. The chairman of the advisory committee, who shall be designated by the President shall report annually to the President and to the Congress on the activities of the advisory committee.

(B) The General Accounting Office shall evaluate the activities taken by the Administration to achieve the purpose of this paragraph and evaluate the success of these activities in achieving the purposes of this paragraph. The General Accounting Office shall report to the Congress by January 1, 1981, and at any time thereafter at the discretion of the Comptroller General, on the findings of this evaluation and shall make recommendations on actions needed to improve the Administration's performance pursuant to this paragraph.

(4) The Administration shall give preference to projects which promote the ownership, participation in ownership, or management of small businesses owned by low-income individuals and small businesses eligible to receive contracts pursuant to section 8(a) of this Act.

(5) The financial assistance authorized for projects under this subsection includes assistance advanced by grant, agreement, or contract.

(6) The Administration is authorized to make payments under grants and contracts entered into under this subsection in lump sum or installments, and in advance or by way of reimbursement, and in the case of grants, with necessary adjustments on account of overpayments or underpayments.

(7) To the extent feasible, services under this subsection shall be provided in a location which is easily accessible to the individuals and small business concerns served.

(8) The General Accounting Office shall provide for an independent and continuing evaluation of programs under sections 7[(i)]*(a)(11),* 7(j), and 8(a) of this Act, including full information on, and analysis of, the character and impact of managerial assistance provided, the location, income characteristics, and extent to which private resources and skills have been involved in these programs. Such evaluation together with any recommendations deemed advisable by the Comptroller General shall be reported to the Congress

by January 1, 1981, and at any time thereafter at the discretion of the Comptroller General.

(9) The Administration shall take such steps as may be necessary and appropriate, in coordination and cooperation with the heads of other Federal departments and agencies, to insure that contracts, subcontracts, and deposits made by the Federal Government or with programs aided with Federal funds are placed in such way as to further the purposes of sections 7[(i)]*(a)(11),* 7(j), and 8(a) of this Act.

(10) There is established within the Administration a small business and capital ownership development program (hereinafter referred to as the "Program" which shall provide assistance exclusively for small business concerns eligible to receive contracts pursuant to section 8(a) of this Act. The program, and all other services and activities authorized under section 7(j) and 8(a) of this Act, shall be managed by the Associate Administrator for Minority Small Business and Capital Ownership Development under the supervision of, and responsible to, the Administrator.

(A) The Program shall—

(i) assist small business concerns participating in the Program to develop comprehensive business plans with specific business targets, objectives, and goals for correcting the impairment of such concern's ability to compete, as determined for such concern pursuant to section 8(a)(6) of this Act, within a fixed period of time as mutually agreed upon by the applicant and the Administrator prior to acceptance in such program: *Provided,* That not less than one year prior to the expiration of such period, and upon the request of such concern, the Administration shall review such period and may extend such period as necessary and appropriate: *Provided further,* That no determination made under this paragraph shall be considered a denial of total participation for the purposes of section 8(a)(9) of this Act;

(ii) provide for such other nonfinancial services as deemed necessary for the establishment, preservation, and growth of small business concerns participating in the Program, including but not limited to (I) loan packaging, (II) financial counseling, (III) accounting and bookkeeping assistance, (IV) marketing assistance, and (V) management assistance;

(iii) assist small business concerns participating in the Program to obtain equity and debt financing;

(iv) establish regular perfomance monitoring and reporting systems for small business concerns participating in the Program to assure compliance with their business plans;

(v) analyze and report the causes of success and failure of small business concerns participating in the Program; and

(vi) provide assistance necessary to help small business concerns participating in the Program to procure surety bonds, with such assistance including, but not limited to, (I) the preparation of application forms required to receive

a surety bond, (II) special management and technical assistance designed to meet the specific needs of small business concerns participating in the Program and which have received or are applying to receive a surety bond, and (III) preparation of all forms necessary to receive a surety bond guarantee from the Administration pursuant to title IV, part B of the Small Business Investment Act of 1958.

(B) Small business concerns eligible to receive contracts pursuant to section 8(a) of this Act shall participate in the Program.

(C) No small business concern shall receive a contract pursuant to section 8(a) of this Act unless—

(i) the business plan required pursuant to section 7(j)(10)(A)(i) is approved by the Administration; and

(ii) the program is able to provide such concern with, but not limited to, such management, technical and financial services as may be necessary to achieve the targets, objectives, and goals of such business.

(11) The Associate Administrator for Minority Small Business and Capital Ownership Development shall be responsible for coordinating and formulating policies relating to Federal assistance to small business concerns eligible for assistance under section 7[i]*(a)(11)* of this Act and small business concerns eligible to receive contracts pursuant to section 8(a) of this Act.

(k) In carrying out its functions under subsections 7[i]*(a)(11)*, 7(j), and 8(a) of this Act, the Administration is authorized—

(1) to utilize, with their consent, the services and facilities of Federal agencies without reimbursement, and, with the consent of any State or political subdivision of a State, accept and utilize the services and facilities of such State or subdivision without reimbursement;

(2) to accept, in the name of the Administration, and employ or dispose of in furtherance of the purposes of this Act, any money or property, real, personal, or mixed, tangible, or intangible, received by gift, device, bequest, or otherwise;

(3) to accept voluntary and uncompensated services, notwithstanding the provisions of section 3679(b) of the Revised Statutes (31 U.S.C. 655(b)); and

(4) to employ experts and consultants or organizations thereof as authorized by section 15 of the Administrative Expenses Act of 1946 (5 U.S.C. 55a), except that no individual may be employed under the authority of this subsection for more than one hundred days in any fiscal year; to compensate individuals so employed at rates not in excess of the daily equivalent of the highest rate payable under section 5332 of title 5, United States Code, including traveltime; and to allow them, while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5 of such Act (5 U.S.C. 73b–2) for persons in the Government service employed intermittently, while so employed: *Provided, however,* That contracts for such employment may be renewed annually.

[(l)(1) The Administration also is empowered to make loans (either directly or in cooperation with banks or other lending insti-

tutions through agreements to participate on an immediate or deferred basis) as the Administrator may determine to be necessary or appropriate to assist any small business concern in financing plant construction, conversion, expansion (including acquisition of land for such a plant), or startup, and the acquisition of equipment, facilities, machinery, supplies, or materials to enable such concern to design architecturally or engineer, manufacture, distribute, market, install, or service any of the following energy measures:

[(A) Solar thermal energy equipment which is either of the active type based upon mechanically forced energy transfer or of the passive type based on convective, conductive, or radiant energy transfer or some combination of these types.

[(B) Photovoltaic cells and related equipment.

[(C) A product or service the primary purpose of which is conservation of energy through devices or techniques which increase the energy efficiency of existing equipment, methods of operation, or systems which use fossil fuels, and which is on the Energy Conservation Measures List of the Secretary of Energy or which the Administrator determines to be consistent with the intent of this subsection.

[(D) Equipment the primary purpose of which is production of energy from wood, biological waste, grain, or other biomass source of energy.

[(E) Equipment the primary purpose of which is industrial cogeneration of energy, district heating, or production of energy from industrial waste.

[(F) Hydroelectric power equipment.

[(G) Wind energy conversion equipment.

[(H) Engineering, architectural, consulting, or other professional services which are necessary or appropriate to aid citizens in using any of the measures described in subparagraphs (A) through (G).

Proceeds of loans under this subsection shall not be used primarily for research and development.

[(2) No loan shall be made under this subsection if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established by this Act would exceed $500,000. No loan made or effected under this subsection directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate basis shall exceed $350,000.

[(3) No financial assistance shall be extended pursuant to this subsection unless the financial applied for is not otherwise available on reasonable terms from non-Federal sources.

[(4) No immediate participation may be purchased unless it is shown that a deferred participation is not available; and no loan may be made unless it is shown that a participation is not available.

[(5) In agreements to participate in loans on a deferred basis under this subsection, the Administration's participation shall not be in excess of 90 per centum of the balance of the loan outstanding at the time of disbursement.

[(6) The Administrator's share of any loan made under this subsection shall bear interest at the same rate as loans made under

subsection (a) of this section. The maximum terms of any such loan, including extensions and renewals, may not exceed fifteen years.

[(7) All loans made unde this subsection shall be of such sound value as reasonably to assure repayment, recognizing that greater risk may be associated with loans made to business concerns in this field: *Provided,* That factors in determining "sound value" shall include, but not be limited to, quality of the product or service; technical qualifications of the applicant or his employees; sales projections; and the financial status of the business concern: *Provided further,* That such status need not be as sound as that required for loans under subsection (a) of this section.

[(8)(A) The Administration, after consultation with the Department of Energy and other Federal departments and agencies as the Administrator deems appropriate, shall publish in the Federal Register for public comment not later than sixty days after the date of enactment of this subsection proposed regulations to carry out the provisions of this subsection. The Administration shall make all reasonable efforts to solicit comments from small businesses and shall take into consideration comments submitted regarding such proposed regulations.

[(B) The administration shall publish final regulations under this subsection not later than one hundred and eighty days after the date of enactment of this subsection.

[(9) It is the intent of Congress that the paperwork burden and regulatory impact on applicants under this subsection shall be minimized, and that to the maximum extent practicable, the Administrator may rely upon consultation with the Department of Energy and other agencies, upon paid consultants, and upon voluntary public submissions of information to obtain market data, industry sales projections, energy savings, and other economic information needed to carry out the provisions of section 7(l)(1) (D) and (E). Nothing in this subsection shall be construed as precluding the Administrator from using any of his lawful powers to obtain information from applicants.]

SEC. 8. (a) * * *

* * * * * * *

(e) It shall be the duty of the Secretary of Commerce, and he is hereby empowered, to obtain notice of all proposed defense procurement actions of $10,000 and above, and all civilian procurement actions of $5,000 and above, for any Federal department, establishment, or agency engaged in procurement of supplies and services in the United States; and to publicize such notices in the daily publication "United States Department of Commerce Synopsis of the United States Government Proposed Procurements, Sales, and Contract Awards," immediately after the necessity for the procurement is established; except that nothing herein shall require publication of such notices with respect to those procurements (1) which for security reasons are of a classified nature, or (2) which involve perishable subsistence supplies, or (3) which are for utility services and the procuring agency in accordance with applicable law has predetermined the utility concern to whom the award will be made, or (4) which are of such unusual and compelling emergen-

cy that the Government would be seriously injured if bids or offers were permitted to be made more than 15 days after the issuance of the invitation for bids or solicitation for proposals, or (5) which are made by an order placed under an existing contract, or (6) which are made from another Government department or agency, or a mandatory source of supply, or (7) which are for personal or professional services, or (8) which are for services from educational institutions, or (9) in which only foreign sources are to be solicited, or (10) for which it is determined in writing by the procuring agency, with the concurrence of the Administrator, that advance publicity is not appropriate or reasonable. *Whenever a procuring agency is required to publish notice of procurement actions, it (1) shall issue a solicitation for a procurement action only after at least fifteen days have elapsed from the date of publication of a proper notice of the action; and (2) shall foreclose competition under a procurement action only after at least thirty days have elapsed from the date of issuance of the solicitation, or, in the case of orders under a basic agreement, basic ordering agreement, or similar arrangement, the date of publication of a proper notice of intent to place the order.*

* * * * * * *

SEC. 10. (a) * * *

* * * * * * *

(h) The Administration shall maintain a record of all applications for or inquiries about the availability of funding for financial assistance under this Act and for guarantees and purchases under the Small Business Investment Act of 1958. Such record shall include the name, address and telephone number of the applicant or person inquiring and the dollar amount involved and shall be kept for a period of at least one (1) year from the date of each.

* * * * * * *

SEC. 15. (a) * * *

* * * * * * *

[(d) For purposes of this section priority shall be given to the awarding of contracts and the placement of subcontracts to concerns small businesses which shall perform a substantial proportion of the production on those contracts and subcontracts within areas of concentrated unemployment or underemployment or within labor surplus areas. Notwithstanding any other provision of law, total labor surplus area set-asides pursuant to Defense Manpower Policy Number 4 (32A C.F.R. Chapter 1) or any successor policy shall be authorized if the Secretary or his designee specifically determines that there is a reasonable expectation that offers will be obtained from a sufficient number of eligible concerns so that awards will be made at reasonable prices. As soon as practicable and to the extent possible, in determining labor surplus areas, consideration shall be given to those persons who would be available for employment were suitable employment available. Until such definition reflects such number, the present criteria of such policy shall govern.

[(e) In carrying out small business set-aside programs, departments, agencies, and instrumentalities of the executive branch

shall award contracts, and encourage the placement of subcontracts for procurement to the following in the manner and in the order stated:

[(1) concerns which are small business concerns and which are located in labor surplus areas, on the basis of a total set-aside;

[(2) concerns which are small business concerns, on the basis of a total set-aside;

[(3) concerns which are small business concerns and which are located in a labor surplus area, on the basis of a partial set-aside;

[(4) concerns which are small business concerns, on the basis of a partial set-aside.

[(f) After priority is given to the small business concerns specified in subsection (e), priority shall also be given to the awarding of contracts and the placement of subcontracts, on the basis of a total set-aside, to concerns which—

[(1) are not eligible under subsection (e);

[(2) are not small business concerns; and

[(3) will perform a substantial proportion of the production on those contracts and subcontracts within areas of concentrated unemployment or underemployment or within labor surplus areas.]

(d) For purposes of this section priority shall be given to the awarding of contracts and the placement of subcontracts to small business concerns which small perform a substantial proportion of the production on those contracts and subcontracts within areas of concentrated unemployment or underemployment or within labor surplus areas. Notwithstanding any other provision of law, total labor surplus area set asides pursuant to Defense Manpower Policy Number 4B (32A CFR Chapter 1) or any successor policy shall be authorized if the head of the procuring Federal agency or his designee specifically determines that there is a reasonable expectation that offers will be obtained from a sufficient number of eligible concerns so that awards will be made at reasonable prices. As soon as practicable and to the extent possible, in determining labor surplus areas, consideration shall be given to those persons who would be available for employment were suitable employment available. Until such definition reflects such number, the present criteria of such policy shall govern.

(e) In carrying out small business set aside programs, Federal agencies shall award contracts, and encourage the placement of subcontracts for procurement to the following in the manner and in the order stated:

(1) concerns which are small business concerns and which are located in labor surplus areas, on the basis of a total small business-labor surplus area set aside;

(2) concerns which are small business concerns, on the basis of a total small business set aside;

(3) concerns which are small business concerns and which are located in a labor surplus area, on the basis of a partial small business-labor surplus area set aside; and

(4) concerns which are small business concerns, on the basis of a partial small business set aside.

(f) After priority is given to the small business concerns specified in subsection (e), priority also shall be given to the awarding of con-

tracts and the placement of subcontracts, on the basis of a total labor surplus area set aside, to business concerns which will perform a substantial proportion of the production on those contracts and subcontracts within areas of concentrated unemployment or under employment or within labor surplus areas.

* * * * * * *

SEC. 20. (a) * * *

(n) The following program levels are authorized for fiscal year 1983:

(1) For the programs authorized by section 7(a) of this Act, the Administration is authorized to make $195,000,000 in direct and immediate participation loans; and of such sum, the Administration is authorized to make $15,000,000 in loans as provided in paragraph (10), $45,000,000 in loans as provided in paragraph (11), and $10,000,000 in loans as provided in paragraph (12).

(2) For the programs authorized by section 7(a) of this Act and section 503 of the Small Business Investment Act of 1958, the Administration is authorized to make $3,140,000,000 in deferred participation loans and guarantees of debentures; and of such sum, the Administration is authorized to make $5,000,000 in loans as provided in paragraph (10), [$60,000,000] *$167,000,000* in loans as provided in paragraph (11), $17,000,000 in loans as provided in paragraph (12), and $350,000,000 in loans as provided in paragraph (13) and guarantees of debentures as provided in section 503.

(3) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make [$35,000,000] *$41,000,000* in direct purchases of debentures and preferred securities and to make [$160,000,000] *$250,000,000* in guarantees of debentures.

* * * * * * *

(q) The following program levels are authorized for fiscal year 1984:

(1) For the programs authorized by section 7(a) of this Act, the Administration is authorized to make $195,000,000 in direct and immediate participation loans; and of such sum, the Administration is authorized to make $15,000,000 in loans as provided in paragraph (10), $45,000,000 in loans as provided in paragraph (11), and $10,000,000 in loans as provided in paragraph (12).

(2) For the programs authorized by 7(a) of this Act and section 503 of the Small Business Investment Act of 1958, the Administration is authorized to make $3,140,000,000 in deferred participation loans and guarantees of debentures; and of such sum, the Administration is authorized to make $5,000,000 in loans as provided in paragraph (10), [$60,000,000] *$167,000,000* in loans as provided in paragraph (11), $17,000,000 in loans as provided in paragraph (12), and $350,000,000 in loans as provided in paragraph (13) and guarantees of debentures as provided in section 503.

(3) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make [$35,000,000] *$41,000,000* in direct purchases of debentures and preferred securities and to make [$160,000,000] *$250,000,000* in guarantees of debentures.

* * * * * * *

SMALL BUSINESS INVESTMENT ACT OF 1958

* * * * * * *

TITLE III—SMALL BUSINESS INVESTMENT COMPANIES

* * * * * * *

CAPITAL REQUIREMENTS

SEC. 302(a). The combined private paid-in capital and paid-in surplus of any company licensed pursuant to sections 301(c) and (d) of this Act shall not be less than $150,000: *Provided, however,* That the combined private paid-in capital and paid-in surplus of any company licensed on or after October 1, 1979 pursuant to sections 301(c) and (d) of this Act shall be not less than $500,000. In all cases, such capital and surplus shall be adequate to assure a reasonable prospect that the company will be operated soundly and profitably, and managed actively and prudently in accordance with its articles. *With respect to a company licensed pursuant to section 301(d), such capital and surplus shall include funds obtained directly or indirectly from an agency or department of a state government or the Federal government (excluding the Administration) for purposes of section 303 leveraging, provided that such funds:*

(1) are not taken into account with respect to meeting the requirements established by the preceding two sentences; and

(2) were invested in or were legally committed to be invested in such company prior to July 29, 1980.

* * * * * * *

TITLE IV—GUARANTEES

PART A—LEASE GUARANTEES

* * * * * * *

POLLUTION CONTROL

SEC. 404. (a) * * *

(b) The Administration may, whenever it determines that small business concerns are or are likely to be at an operational or financing disadvantage with other business concerns with respect to the planning, design, or installation of pollution control facilities, or the obtaining of financing therefor (including financing by means of revenue bonds issued by States, political subdivisions thereof, or other public bodies), guarantee the payment of rentals or other amounts due under qualified contracts. Any such guaran-

tee may be made or effected either directly or in cooperation with any qualified surety company or other qualified company through a participation agreement with such company. The foregoing powers shall be subject, however, to the following restrictions and limitations:

(1) Notwithstanding any other law, rule, or regulation or fiscal policy to the contrary, the guarantee authorized in the case of pollution control facilities or property [may] *shall* be issued when such property is acquired by the use of proceeds from industrial revenue bonds which provide the holders interest which is exempt from Federal income tax, *and the Administration is expressly prohibited from denying such guarantee due to the property being so acquired.*

* * * * * * *

AUTHORITY OF THE ADMINISTRATION

SEC. 411. (a) * * *

* * * * * * *

(h) The Administration shall administer this Part on a prudent and economically justifiable basis and establish such fee or fees for small business concerns and premium or premiums for sureties as it deems reasonable and necessary, to be payable at such time and under such conditions as may be determined by the Administration. *The Administration shall not establish eligibility criteria based on the amount of the bond, subject to the limitation in subsections (a) and (c), or upon a percentage related to previously successfully completed contracts. The Administration shall evaluate each application on a case-by-case basis and based solely thereon shall determine the appropriate guarantee.*

* * * * * * *

TITLE V—LOANS TO STATE AND LOCAL DEVELOPMENT COMPANIES

* * * * * * *

Sec. 502. The Administration may, in addition to its authority under section 501, make loans for working capital, plant acquisition, construction, conversion or expansion, including the acquisition of land, to State and local development companies, and such loans may be made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis: *Provided, however,* That the foregoing powers shall be subject to the following restrictions and limitations:

(1) The proceeds of any such loan shall be used solely by such borrower to assist an identifiable small-business concern and for a sound business purpose approved by the Administration.

(2) Loans made by the Administration under this section shall be limited to $500,000 for each such identifiable small-business concern.

(3) Any development company assisted under this section must meet criteria established by the Administration, including the extent of participation to be required or amount of

paid-in capital to be used in each instance as is determined to be reasonable by the Administration. Community injection funds may be derived, in whole or in part, from—

(A) State or local governments;

(B) banks or other financial institutions;

(C) foundations or other not-for-profit institutions; or

(D) a small business concern (or its owners, stockholders, or affiliates) receiving assistance through bodies authorized under this title.

DEVELOPMENT COMPANY DEBENTURES

SEC. 503 (a)(1) Except as provided in subsection (b), the Administration may guarantee the timely payment of all principal and interest as scheduled on any debenture issued by any qualified State or local development company.

(2) Such guarantees may be made on such terms and conditions as the Administration may by regulation determine to be appropriate.

(3) The full faith and credit of the United States is pledged to the payment of all amounts guaranteed under this subsection.

(4) Any debenture issued by any State or local development company with respect to which a guarantee is made under this subsection, may be subordinated by the Administration to any other debenture, promissory note, or other debt or obligation of such company.

(b) No guarantee may be made with respect to any debenture under subsection (a) unless—

(1) such debenture is issued for the purpose of making one or more loans to small business concerns, the proceeds of which shall be used by such concern for the purposes set forth in section 502;

(2) necessary funds for making such loans are not available to such company from private sources on reasonable terms;

(3) the interest rate on such debenture is not less than the rate of interest determined by the Secretary of the Treasury for purposes of section 303(b);

(4) the aggregate amount of such debenture does not exceed the amount of loans to be made from the proceeds of such debenture (other than any excess attributable to the administrative costs of such loans);

(5) the amount of any loan to be made from such proceeds does not exceed an amount equal to 50 percent of the cost of the project with respect to which such loan is made [; and] : *Provided, That the Administration shall not use the source or nature of the funds constituting the remaining per centum of the project cost as a criteria to approve or reject such guarantee; and*

(6) the Administration approves each loan to be made from such proceeds.

* * * * * * *

○